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THE FINANCIAL HISTORY OF WISCONSIN

BY

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PREFACE

In the preparation of this work the writer has had in mind continually two classes of readers, the one having a general or a personal interest in Wisconsin history, the other having a scientific or professional interest in public finance and its problems. In order to make the production of greater interest to the first class the personal element has been brought in as much as possible; while on the other hand the writer has attempted to present and discuss the history and its problems in a scientific spirit.

The striking characteristics of Wisconsin's financial history are many and significant, among which may be mentioned, the careful provisions of the Constitution to guard against a great and burdensome state debt, the great extravagance in local communities, the Constitutional struggle as to the meaning of uniformity in taxation and as to the Constitutional limitations on the taxing power of the legislature, the fraud, waste, and corruption that characterized the sale and management of the state lands and also the administration of the Trust or Education Funds arising from the sale of such lands, the great and steady increase in expenditure for state administration, the great development of corporation taxes, the rapid development and extension of the state administered ad valorem tax on public service corporations, and the recent significant and important developments in the direction of a complete centralization in the assessment and levy of local taxes.

Grateful acknowledgements are due to Professor Richard T. Ely, Professor John R. Commons and Professor Thomas S. Adams of the University of Wisconsin for their encouraging interest in this study; to Professor Henry B. Gardner, of Brown University, for valuable direction and stimulating criti-

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Madison, Wisconsin.

THE FINANCIAL HISTORY OF WISCONSIN

CHAPTER I

AN HISTORICAL SKETCH OF WISCONSIN'S POLITICAL STATUS

The history of Wisconsin as a white man's country began in the year 1634, when clad in Oriental robes and discharging two pistols to excite the wonder of the strange Indians whom he was meeting, Jean Nicholet, "agent of the inquiring and politic Champlain," seeking a passage to China, disembarked on Wisconsin soil and took possession of the region in the name of the King of France[1]. As a result of the French and Indian War Wisconsin passed in 1763 into the hands of the English and became a part of the Province of Quebec. In 1783, at the close of the Revolutionary War Wisconsin became American territory. It was without organization until 1787, when through the famous Ordinance of that year it became a part of Northwest Territory. In the years from 1787 to 1818 it was successively a part of Northwest Territory, of Indiana Territory, and of Illinois Territory. When in 1800 the region afterward called Ohio was organized as the Northwest Territory, the rest of the Old Northwest Territory was named Indiana Territory. In 1816 the State of Indiana was created and the Wisconsin country became a part of the Territory of Illinois. When two years later Illinois was admitted to the Union, Wisconsin became a part of Michigan Territory. The erection in 1836 of the State of

[1] Vide Thwaites, *French Regime in Wisconsin*, in *Wisconsin Historical Society Collections*, XVI.

Michigan made necessary the organization of the Territory of Wisconsin, which became a state in 1848.

The Ordinance of 1787 gave to the prospective fifth state of the Old Northwest Territory a much greater area than that possessed by the State of Wisconsin. The upper Michigan Peninsula was taken from Wisconsin and given to Michigan in order to compensate the latter for its loss to Ohio of the Toledo area, which according to the Ordinance of 1787 belonged to Michigan. The Chicago strip, the area bounded by the southern boundary of Wisconsin and a line parallel to that boundary and passing through the southernmost point of Lake Michigan, was given to Illinois in 1818 in order that Illinois might have a lake front. In 1838 the trans-Mississippi area of the Territory of Wisconsin was erected into the Territory of Iowa and in 1846 a part of Wisconsin became the Territory of Minnesota.[2]

As has been observed the Chicago strip was given to Illinois in order that she might have a lake front. The delegate to Congress from Illinois Territory, Nathaniel Pope, in urging the adoption of his amendment to the Illinois Enabling Act, argued that Illinois was the key to the West and that upon her possession of a lake port might depend her fidelity to the Union. Illinois, he said, had practical control of the Ohio, Wabash and Mississippi rivers, all of which flowed south. It was highly desirable that Illinois have a lake coast that would afford it communication with Indiana, Ohio, Pennsylvania and New York. Such a lake front might be essential to the integrity of the union. Judge Pope argued that if Illinois were entirely dependent on southern flowing rivers, "in case of national disruption the interest of the state would be to join a southern and western confederacy." It was important, he argued, that Illinois have a balancing northern commercial connection with the Great Lakes and thence with the eastern states.[3] This argument shows an appreciation of the close relation between political affiliation and economic interest.

In consequence of the loss of the Chicago strip, there was a

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[2] Vide Thwaites, *Boundaries of Wisconsin*, in *Wisconsin Historical Society Collections*, XI.

[3] Ibid., 495.

boundary dispute in Wisconsin for years. In 1843 the territorial legislature passed resolutions declaring that the United States had infringed on the boundaries of the fifth state of the Old Northwest Territory, but that Wisconsin would make no further protest if Congress would carry out the following internal improvements:

1. The construction of a railroad between Lake Michigan and the Mississippi river.
2. The improvement of the Fox and Wisconsin rivers, so as to make a national waterway between the Great Lakes and the Mississippi.
3. A canal between the Fox and Rock rivers.
4. Harbors on the west shore of Lake Michigan, at Southport (Kenosha), Racine, Milwaukee, Sauk Harbor, Sheboygan, and Manitowoc.

The attitude of the territorial legislature was very belligerent. It was declared that if Congress did not accede to the terms offered or did not admit Wisconsin to the Union with her ancient boundaries, Wisconsin "would be a state out of the Union, and possess, exercise and enjoy all the rights, privileges and powers of the sovereign, independent State of Wisconsin, and if difficulties must ensue, we could appeal with confidence to the Great Umpire of Nations to adjust them." It was declared in unequivocal terms that Wisconsin would maintain the integrity of its borders and if peaceful means failed, every other means within its power, whatever might be the sacrifice, would be resorted to.

Congress paid no attention to this threat of secession. The southern boundary was not changed, nor were the improvements asked for granted until long afterward.[4]

This affair is interesting and suggestive. Viewed in the light of the many northern threats of secession, the term rebel applied to the South is devoid of stigma. Loyalty to the Union was just as characteristic of the South as of the North. Each was loyal just as long as the federal government did not infringe on state rights nor impair state interests.

[4] Thwaites, R. G., *The Story of Wisconsin.* (Boston 1890), 217, 218, 219.

Wisconsin certainly had a legal right to her boundaries as defined by the Ordinance of 1787, but in the opinion of the writer there is grave doubt as to her moral right to them. On the whole the boundaries of 1787 were rather artificial and not altogether sensible. Ohio certainly has more natural right than Michigan to the Toledo strip, and there is no reason why Illinois should have been left without a lake front when there was an opportunity to give her one. Furthermore, Wisconsin with her ancient boundaries would be three times as large as she now is.[5]

[5] Vide maps in Thwaites' *Boundaries*.

CHAPTER II

FINANCES AND THE CONSTITUTION

I. Finances in the Constitutional Convention

The Constitution of the state of Wisconsin was framed and adopted at a time when the disasters of wild-cat banking and of unwise and corruptly managed internal improvements by the states were still fresh in the minds of the American people. Eleven years before, in 1837, Michigan, infected with the speculative fever of the time, had entered the Union. The people of Wisconsin had seen their neighbor state become saddled with a heavy public debt, as a result of entering upon great systems of internal improvements far too extended for the state's needs and requiring expenditures far beyond its means. In Illinois, also close at hand, state banking and state improvements had both resulted in failure and disaster. That the disasters of the era of speculative public improvements that closed with the panic of 1837 were still fresh in the minds of the men who in 1848 drafted the constitution for the state of Wisconsin is evident from the debates of the Constitutional Convention and from the provisions of the Constitution relating to public debt and internal improvements. It is very clear that Wisconsin profited by the lessons to be learned from the disastrous experiences of her older sisters in the Union.

The framers of the Constitution for the Badger State were not seers; they did not create a constitution that will answer all needs and purposes until the millennium arrives, but they did frame a constitution that at least in so far as its financial provisions are concerned was a wise one and a fairly adequate one. They made no provision for a tax on incomes, but could they have been expected to foresee the necessity for such a tax?

They were perhaps overcautious in limiting the amount of state debt as they did, but the disastrous experiences of local governments in Wisconsin in the matter of public debt and the vile corruption that has at times marked the administration of state affairs in Wisconsin lead one to the conclusion that the restriction was on the whole a wise one. One grave criticism must, however, be passed upon the original constitution. It did not restrict sufficiently municipal indebtedness. This defect has, however, as will be shown later, been remedied.

The financial provisions of the constitution of the state of Wisconsin fall into four categories,—taxation, public debt, internal improvements, and school lands. The committee on finances reported with respect to taxation the following, "*All taxes levied in this state shall be as nearly equal as may be.*"[1] The committee was evidently striving for a rule of equality and uniformity, but the indefiniteness and ambiguity of its recommendation were so great as to justify the objection of one member who declared that he wanted a constitution that the common people could understand and not one that no one but a lawyer could interpret. The first amendment adopted changed the committee's recommendation so as to read, "*All taxes levied in this state shall be as nearly equal as is practicable, and shall be levied upon such property as the legislature shall prescribe.*" Next it was decided to substitute for "*All taxes levied in this state shall be as nearly equal as is practicable,*" the words, "*The rule of taxation shall be uniform throughout this state.*" The form finally adopted is, "*The rule of taxation shall be uniform and taxes shall be levied upon such property as the legislature shall prescribe.*"[2] The following amendment was proposed and lost, "All taxes levied in this state shall be uniform and equal; and shall be levied upon a just valuation of real and personal property." There was considerable struggle over the exemption of property from taxation. The finance committee of the convention favored an exemption provision and reported the following, "The property of the state and counties,

[1] *Journal of Constitutional Convention of 1847-48*, 113.
[2] *Constitution of Wisconsin*, Sec. 1, Art. VIII.

both real and personal, and such property as the legislature shall deem proper, belonging to educational, charitable or religious institutions, or set apart for such purposes, shall be exempted from taxation." The convention decided, however, that the matter of exemption should be left without restriction to the legislature.

So we see that the Constitution of the state of Wisconsin provides first, that *the rule of taxation shall be uniform* and secondly, that *taxes shall be levied upon property*, prescribed by the legislature. Like many other states, Wisconsin has long since discovered that a property tax is not sufficient, that it does not meet all the requirements of justice and equality. In 1903 a joint resolution was adopted by the legislature to add to the taxation clause the following provision, "The legislature may provide for a graduated income tax."[3] Because of the failure of the secretary of state to have the proposed amendment published three months before the election of the legislature of 1905, this resolution came to naught. Perhaps, however, it is well that it did, for the legislature of 1905 proposed a better amendment as follows, "Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."[4] If this amendment is properly advertised and is sanctioned by the legislature of 1907, it will come before the people for adoption or rejection. In the Assembly the vote on the amendment proposed in 1905 was 80 to 10; in the Senate the vote was 18 to 12.*

The Constitution is very explicit in its provisions against a permanent or a large state debt or the exploitation of the state or its treasury. The credit of the state shall never be given or loaned in aid of any individual, association or corporation. No money shall be paid out of the treasury except in pursuance of an appropriation by the legislature, and by an amendment adopted November 6, 1877, no appropriation shall be made for the payment of any claim against the state unless the claim

[3] *Laws of 1903*, 776.
[4] *Laws of 1905*, 992.
* This proposed amendment was ratified by the legislature of 1907.

is filed within six years after the debt is contracted or the claim accrues. It is stipulated that the legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year, and whenever the expenses of the state for any year exceed the income for that year, the deficit shall be included in the tax for the next year. For the purpose of defraying extraordinary expenses the state may contract debts, but such debts shall never in the aggregate exceed one hundred thousand dollars, except that debts in any amount may be contracted for repelling of invasion, suppressing insurrection or defending the state in time of war, but the money raised for such purposes shall be applied exclusively for such purposes or for the repayment of the debts. Every debt must be authorized by law, for some purpose distinctly stated in the authorizing law; the vote on a bill to authorize the contracting of a debt must be taken by yeas and nays and a majority vote of all members elected to each house is necessary to its passage. Every law authorizing a debt must provide for the levying of an annual tax sufficient to pay the annual interest on the debt and also the principal within five years from the time of the passage of the law, and must specifically appropriate the proceeds of such taxes to such payments of principal and interest. Such appropriation cannot be repealed nor the taxes postponed nor diminished until the principal and interest have been paid in full. No scrip, certificate or other evidence of state indebtedness can be issued except as indicated in the foregoing.[5] On the whole these provisions with respect to state debt are, it seems to the writer, wise. However, the criticism is perhaps just that the debt limit is too low and the period of five years too short.

The committee on general provisions, of which committee Byron Kilbourne was chairman, in its report to the Convention recommended a limit of $200,000 and a time limit of ten years. The first constitution which had been rejected by the people for reasons having nothing to do with public finances, had provided for a limit of $100,000. The first amendment to substitute $100,000 for $200,000, the amount recommended by the commit-

[5] *Constitution of Wisconsin*, Art. VIII.

tee, was lost by a vote of 20 to 25.[6] At that time a majority of the members voting evidently believed with the committee that exigencies might arise under which the $100,000 limit would be too low. At a subsequent meeting the matter was again taken up. Mr. Kinne in proposing his amendment substituting $100,000 and five years expressed the opinion that the provisions for war debt would provide for all necessary debt in excess of $100,000. He intimated that the larger sum was proposed in order to enable the state to engage in internal improvements or that the proposal was part of a general banking policy. Evidently the specters of disastrous internal improvements and of wild cat banking were stalking about in the convention hall. Mr. Kilbourne said in reply that a work of internal improvement limited to $200,000 would be a very small one indeed and that so small a sum would afford but a very insignificant capital for state banking. Another member, Mr. Gale, said that he did not see for what purpose a debt of $200,000 could be required unless it should be for internal improvements. The fear of internal improvement disasters and of a ruinous state bank were so great that the amendment to substitute $100,000 for $200,000 was carried by a vote of 37 to 24, and the amendment to substitute five years for ten years was carried by a vote of 41 to 18.

The $100,000 limit was undoubtedly too low. In 1858 a select committee of the legislature recommended an amendment providing that the state might for the purpose of erecting and enlarging public buildings contract a debt not in excess of $700,000 to be paid in eighteen years, but nothing came of the recommendation.[7] If provision had been made for a larger debt the necessity for the early painful financial struggles of the State University would not have arisen and it would not have been necessary to erect university buildings out of the University Fund, a procedure that was certainly contrary to the terms of the land grant by congress for the maintenance of a state university. In 1862 a law was enacted canceling the loan from the fund for the erection of Main Hall and authorizing the

[6] *Journal of Constitutional Convention*, 195.
[7] *Milwaukee Sentinel*, April 29, 1858.

regents to cancel with money drawn from the Fund all indebtedness for buildings. Main Hall cost $45,810: the rest of the building debt amounted to $47,416.27. The first appropriation for the University, an appropriation of $7,303.76 annually for ten years, was the interest on the amount spent from the Fund on buildings.[8]

As has already been said the constitution, prior to the amendment of November 3, 1874, did not adequately restrict municipal indebtedness. It provided merely that it is the duty of the legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing of money, contracting of debts and the loaning of their credit, in order that abuses in assessments, in taxation and in contracting debts may be prevented. Experience has shown that in Wisconsin this general power and obligation to regulate local finances has not been sufficient. The constitutional amendment of November 3, 1874, provides that no county, city, town, village, school district, or other municipal corporation can become indebted in any manner or for any purpose, to any amount including existing indebtedness in excess of five per cent of the value of the taxable property in the municipality, such value to be ascertained from the assessment for state and county taxes next preceding the time when the indebtedness is incurred. A municipal corporation must, at or before the time of incurring indebtedness, provide for the collection of a direct annual tax sufficient to pay the interest on the debt as it falls due and sufficient also to pay the principal within twenty years.[9] In the general power given the legislature to regulate municipalities the word *assessment* following as it does the word *taxation* is of great significance, as we shall see subsequently in the discussion of the legality of local assessments.

The question of internal improvements was a much debated one in the constitutional convention and as a result of the struggle carried on in the convention it was provided that the state of Wisconsin shall never contract any debt for works of internal

[8] *Laws of 1862*, ch. 268; *Laws of 1867*, ch. 82.
[9] *Constitution of Wisconsin*, Sec. 3, Art. XI.

improvement, or be a party to the carrying on of such works, but whenever grants of land or other property shall have been made to the state and are specially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants and may pledge or appropriate to their completion any revenues derived from such works.[10] The committee on internal improvements reported to the convention a recommendation embodying all the provisions finally adopted, except the one relating to the appropriation to the completion of the works of the revenues derived from them. There was a minority report recommending that the question of internal improvements be left to the people. A protracted debate followed the two reports. There was some considerable opposition to the plan of forbidding internal improvements by the state. It was advocated that the state be allowed to enter upon internal improvements not exceeding in cost $300,000 and that each internal improvements bill receive the sanction of the people before it should become a law, and further that an annual tax be levied sufficient to pay off the internal improvement debt in fifteen years. The valuable improvements made by the state of New York were pointed to and it was declared by H. T. Sanders that, "Because some of the states, when possessed of unlimited power upon the subject, had in a period of general excitement and speculation abused that power, it did not follow of necessity that it was not a salutary power under proper restrictions and limitations." Internal improvements it was declared, undertaken judiciously by states, had been of incalculable benefit not only to themselves but also to neighboring states and to the nation as a whole. It was declared that the state of New York had doubled its wealth through its internal improvements, and the great importance to the West and to the Nation of the Erie Canal was dwelt upon.[11]

Another member, Mr. Chase, thought that experience should not be borrowed from New York, a state overflowing with wealth seeking investment, but that it should be borrowed rather from

[10] Ibid., Sec. 10, Art. VIII.
[11] *Journal of the Constitutional Convention*, 208.

Illinois and Michigan, which as is well known met with disaster in their internal improvement enterprises. In reply to the contention that internal improvements under the plan proposed would not be undertaken unless the people wanted them, this speaker observed that the same had been true in Michigan, where three grand schemes for three different parts of the state were brought forward at the same time; local interests effected the adoption of all three and the state was thrown into hopeless debt.[12] Mr. Sanders' amendment, which provided for internal improvements "under proper restrictions and limitations," was finally laid on the table.*

Later Mr. Lovell offered a substitute for the internal improvements clause reported by the committee. This substitute provided that the five hundred thousand acres of land granted by the United States for internal improvements, or the proceeds therefrom should constitute a perpetual fund the interest on which together with the five per cent of the net proceeds of sales of United States lands in the state of Wisconsin should be appropriated annually to the construction and repair of roads and bridges in the several counties according to their respective populations. This construction and repair work was to be done under the direction of the supervisors of each county. It was provided that the legislature might by law apply the proceeds of the funds or a part thereof, but each such law was to have reference to but one work of improvement and was to be valid only when approved by the majority of the votes at the general election next succeeding its enactment by the legislature. The moving of Mr. Lovell's substitute inaugurated a spirited and protracted struggle between those who desired that the five hundred thousand acre grant be devoted to internal improvements and those who wished to dedicate the grant to public education. Mr. Lovell in moving his amendment, called attention to the proposition made in the first constitutional convention to apply these funds to the support of common schools. He was in favor of supporting common schools and advancing the cause of education, but in his opinion a large school fund was not al-

[12] *Journal of the Constitutional Convention*, 211.

* Vide footnote p. 202.

ways the best means of advancing that cause. Connecticut had a magnificent school fund, yet in that state education was backward, because the people, since they were not called upon to contribute to their support, felt little interest in their schools; on the other hand Massachusettes and Rhode Island had no school funds yet were in enjoyment of splendid schools. The speaker did not favor a school fund that would support the schools throughout the year; he believed that a part of their support should be through taxation. Undoubtedly he was right in this last contention, but he greatly overestimated the value of the sixteenth section in each township grant, which he believed to be ample for the support of the schools. He overestimated also the value of the funds that he was trying to have applied to internal improvements. The sixteenth section grant, he estimated, would amount to a million dollars. He feared that if the five hundred thousand acre grant and the five per cent fund were devoted to schools much waste would result. It was his opinion that in such an event his own county of Racine for example would receive one dollar per inhabitant, one-half of which sum would be wasted.

Mr. Lovell's plan of devoting these funds to internal improvements had the merit, he affirmed, of making such improvements possible without making it possible for the state to run into debt on account of such improvements. This contention was undoubtedly true, but the history of the administration of these funds, which were dedicated to the support of schools, makes it doubtful whether the state of Wisconsin could have applied them honestly and efficiently to works of internal improvement. In addition to the proceeds of these funds it was a part of Mr. Lovell's plan to apply to public improvements the surplus over and above the expenses of the state that would arise from a tax of 1.7 mills, which tax he figured would yield on an average for the then next succeeding four years $51,000 annually, whereas Ohio had run its government for several years at an annual expense of less than $34,000.*

*It may be noted that throughout the financial history of Wisconsin, Ohio was frequently referred to as a model to be followed, or an example to be avoided.

The plan proposed by Mr. Lovell met with vigorous attack. Mr. Harvey showed that the case of Connecticut, even if its schools were inferior to those of neighboring states, proved nothing with respect to the desirability or non-desirability of a large school fund. It was true that Massachusetts and Rhode Island had no school funds, but had fine schools; but in those states individuals had by gifts made up for the lack of a school fund. This speaker showed with considerable clearness the inadequacy of the sixteenth section grant. There were in 1848 in the Territory of Wisconsin 52,000 school children. According to New York statistics two-thirds of the cost of educating them would amount to $80,000 a year, which was $10,000 in excess of the yield (estimated liberally) of the sixteenth section grant, even if such yield were available. It was not immediately available and before it would become so, the population of the state would have greatly increased. The necessity of normal schools was pointed out. Another valid objection to the Lovell plan was made. The plan of distributing the proceeds of the funds in question among the counties would necessitate their passing through so many agencies that waste would be inevitable, and furthermore such a distribution would become a part of a system of political favoritism. Ohio was declared to be a warning example of the folly of such a disposition of the bounty of Congress.[13]

Other speeches indicated that the provision in the first constitution for the application to education of the funds in question had met with the approval of the people.

At a subsequent session the Sanders amendment was taken from the table and the whole question of internal improvements was gone over again.* Mr. Gale, the first speaker, deprecated any provision in the constitution that "would allow our state

[13] *Journal of the Constitutional Convention*, 235.

*The Sanders Amendment.

Sec. 1. This state shall encourage internal improvements by individual associations and corporations; but shall not carry on or be a party in carrying on any work of internal improvement except in cases authorized in this article.

Sec. 2. The legislature shall have power at a regular session to pass laws authorizing the improvement of the navigable waters leading into the Mississippi or Lake Michigan, and the carrying places between the same: Provided, however, that the legislature shall not pass more than one act at the same

to plunge into the gulf of internal improvements, which had swallowed up the credit and prosperity of so many of our sister states." The state, it was declared, could not carry out such improvements as economically as could individuals or joint stock companies. The splendid public works of the state of New York had cost twice as much as they would have cost if they had been constructed by private capital. Legislation on internal improvements had alone cost the Empire State thousands of dollars. Other arguments were advanced showing that with a referendum clause a majority might burden a minority with the cost of internal improvements from which the latter might derive no benefits.[14] The Sanders amendment was lost by a vote of 54 to 9.[15]

The defeat of the Sanders amendment settled it in so far as the constitutional convention was concerned and the vote of the people settled it finally, that Wisconsin was to enter upon no public improvements except in cases in which Congress granted lands for certain specific works of that nature. The legislature of 1905, however, adopted a joint resolution to amend the internal improvements section, which is section 10, article VIII of the Constitution, by adding, "provided that the state may appropriate money in the treasury or to be hereafter raised by taxation for the construction or improvement of public highways."[16] The five hundred thousand acre grant and the five per cent fund were dedicated to the cause of education. Section 2, Article X of the Constitution providing for a school fund reads, "The proceeds of all lands that have been or hereafter may be

session, and such law shall embrace no more than one subject of improvement, which shall be singly and specifically stated therein.

Sec. 3. Every such law shall impose and provide for the collection of a direct annual tax to pay and sufficient to pay the interest on the debt that may be incurred by such work, as fast as the same shall fall due and also to pay and discharge the principal of such debt within 15 years from the time of the contracting thereof.

Sec. 4. On the final passage of such a law the ayes and noes shall be taken and before such a law shall become effective it must receive the sanction of a majority of the voters at a general election.

The money received from the sale of bonds for such a work shall be applied to that work and to nothing else.

The aggregate debt for internal improvements shall not at any time exceed $300,000. *Journal of the Constitutional Convention*, 207, 208.

[14] *Journal of the Constitutional Convention*, 347.

[15] Ibid., 352.

[16] *Laws of 1905*, 991. Ratified by legislature of 1907.

granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university) and all moneys, and the clear proceeds of all property that may accrue to the state by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified, and the five hundred thousand acres of land to which the state is entitled by the provisions of an act of Congress entitled 'An act to appropriate the proceeds of the sale of public lands and to grant preemption rights, approved the fourth day of September, one thousand eight hundred and forty-one,' and also the five per centum of the net proceeds of the public lands to which the state shall become entitled on her admission to the Union (if Congress shall consent to such appropriation of the two grants last mentioned) shall be set apart as a separate fund, to be called the school fund, the interest of which, and all other revenues derived from the school lands shall be exclusively applied to the following objects, to-wit:

1. To the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor,

2. The residue shall be appropriated to the support and maintenance of academies and normal schools, and the purchase of suitable libraries and apparatus therefor.''

Sections 3, 4, 5 and 8 make the following provisions. It is incumbent upon the legislature to establish district schools. Towns and cities are obliged to raise by taxation at least one-half of the amount received from the school fund. The income of the school fund is apportioned among the towns and cities in proportion to the number of persons between the ages of four and twenty years in each town or city. When school or university land is sold on contract the board of school land commissioners, who are the secretary of state, state treasurer, and attorney-general, is obliged by the constitution to take a mortgage on the property at seven per cent. The school and university

funds are to be invested as the legislature provides and directs.

Congress consented to the dedication of the five hundred thousand acre tract and the five per cent fund to education, and so Wisconsin began business as a State, June 7, 1848, with a magnificent school endowment. In the chapters on the administration of the Trust Funds and the sale and management of State Lands it is shown how shamefully that splendid endowment was impaired and wasted.

II. The Rule of Uniformity and Supreme Court Decisions in Relation Thereto

The Constitution of the State of Wisconsin, as has been shown, requires that the rule of taxation shall be uniform and that taxes shall be levied upon such property as the legislature shall prescribe. The meaning of this requirement has been the subject of much controversy. The question has been raised again and again as to whether the rule of uniformity allows the taxation of the property of railroads, banks, insurance companies, etc., in a manner different from the one in accordance with which other property is taxed. It has been questioned, too, whether the taxation clause allows the exemption of certain property from taxation. Most of the discussion and agitation has had reference to the uniformity part of the clause, but the question has been raised also as to whether the provision that taxes shall be levied on property precludes a tax on receipts.

The history of the uniformity clause in the constitutional convention shows very clearly, even if the word uniform itself did not so indicate, that the purpose of the rule of uniformity is to secure equality in taxation. The crucial question is, does a rule requiring equality preclude classification of property for purposes of taxation. Before tracing the history of the rule in the Wisconsin courts it may be well worth while to dwell briefly upon the interpretation placed by the Federal Supreme Court upon that clause of the fourteenth amendment to the Constitution of the United States that guarantees equal protection of the laws, in as far as the clause relates to taxation. The

Federal Court has held that the equality rule does not prohibit classification, that classification is permissible under the rule so long as it is reasonable and the taxes levied are uniform and equal with respect to the same class of persons. In the case of *Bell's Gap Railroad Company vs. Pennsylvania* the Court declared valid a law of Pennsylvania subjecting all moneyed securities to a tax of three mills on their actual value, except bonds and other securities issued by corporations, which bonds etc., were taxable at the rate of three mills on their par or nominal value. This classification appeared reasonable to the Court as there was no discrimination with respect to persons of the same class. In the Illinois Anti-Trust Law case the Court said, "the guarantee of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws as that which is enjoyed by other persons or other classes in the same place and in like circumstances." Equality demands like treatment of persons in the same class. It forbids classification only when classifications are arbitrary and unjust and work unlike treatment of like persons or classes. The Illinois inheritance tax law which provides for discriminating progressive rates graduated according to degree of relationship and amounts inherited was upheld by the Supreme Court of the United States, on the ground that the rule of equal protection of the laws requires merely that all persons shall be treated alike under like circumstances and in like conditions, both in the matter of privileges granted and liabilities imposed. Some of the state courts have taken the same view of the requirement of equality and uniformity. The right of the states to exempt property from taxation is subject to the same rule of reasonableness and equality.[17]

In June, 1855, one year after the enactment of the law providing for a gross receipts tax on railroads and plank roads, the question of uniformity first came before the Wisconsin Courts, in the suit of the Milwaukee and Mississippi Railroad Company to restrain the Supervisors of Waukesha County from collecting a tax levied on the property of the company in that county.

[17] Judson, *The Taxing Power; State and Federal in the United States*, 558 et seq.

The company contended that the local tax was illegal as the gross receipts tax was in lieu of all other taxes. The county declared the gross receipts tax unconstitutional as in violation of the rule of uniformity, and for three reasons:

(1) it established a rule of taxation on railroad and plank road property different from the rule applicable to other property, since it was a tax on income and not on property,

(2) it levied a state tax and exempted from town, county and district taxes, while other property paid all four,

(3) it established a new mode of levying taxes different from the general rule.

The finding of the Circuit Court for the railroad company was sound legally and economically, but its reasons for its finding were unique. The court based its decision in the main on the second clause of the taxation section of the Constitution, which, as will be recalled, reads, "Taxes shall be levied on such property as the legislature shall prescribe." The second clause was held to qualify the first which provides that "the rule of taxation shall be uniform." The legislature was declared to be vested with the absolute power of declaring what property should be subject to taxation and what not, a power which had been exercised from the beginning of the State Government. By virtue of this power, large amounts of real and personal property had been exempted from taxation; to wit, all the property of the United States and of the states, all the property of the several counties, cities, villages, towns and school districts, used or intended to be used for corporate purposes, personal property exempt from execution to the amount of $200, the personal property of all incorporated literary, benevolent, charitable and scientific institutions, and all real estate belonging to them and actually used for the purposes for which these institutions had been incorporated, also church property, cemeteries, public libraries, etc. The clause declaring that taxes should be levied upon *such property as the legislature should prescribe* very clearly gave to that body the right to exempt property from taxation. The Court held therefore that railroads and plank roads might be exempted wholly or partly. In the opinion of the Court they were exempted wholly; their

annual payment to the state was *not a tax,* but *a bonus* or *compensation* for exemption. The Court said, "The whole substance and effect of the law is to release these companies absolutely from all ordinary taxes for ordinary purposes, upon the condition of an annual payment to the State." It was argued that if the state had exempted the property of the companies from ordinary taxation in consideration of their performing some service to the state, such as carrying troops or public stores free of charge no one would have called the service a tax or questioned the validity of the exemption. This part of the decision was in refutation of the charge that the gross receipts tax was invalid, since it was not a tax on property. With respect to the rule of uniformity the Court held that the rule was not violated by the gross receipts tax law because under that law all within the same class were treated alike. The second part of the clause requiring that taxes be levied on property was not violated because the gross receipts tax was not really a tax but merely a bonus paid for exemption. The Court certainly put a sound construction on the uniformity rule, but it is not clear to the writer that the bonus argument was either strong, or necessary to the justification of the tax under the property clause. In this connection two points are clear; first, the gross receipts tax amounted to a partial rather than a total exemption, second, the legislature in enacting the law had in mind a preferential taxation of railroad property, using receipts as the index to the value of such property. A tax on a lawyer's or a physician's income would not be a tax on property, but a tax on the income of a railroad may justly be regarded as a tax on property, since such an income is derived from the employment of property. Two considerations induced the legislature to enact the gross receipts tax law; first, local assessment of railroad property was very inequitable, second, in order that the resources of the state might be developed and its prosperity promoted, it was deemed desirable to tax railroad property preferentially, or in other words to exempt such property in part. The gross receipts tax was adopted because income seemed to be the fairest measure of the value of a railroad's property.

The written opinion of the Supreme Court, which opinion was never filed and was discovered only after several years, upholds the decision of the lower court. In their appeal to the Supreme Court, the defendants, the Supervisors of Waukesha County, advanced another reason for the unconstitutionality of the gross receipts law, namely, that the yeas and nays had not been called on the bill, and that there was no entry in the journal to show that there had been present a quorum of three-fifths at the time when the bill was voted upon. The Supreme Court disallowed this claim of unconstitutionality, holding that the law of 1854 did not impose a tax within the constitutional meaning of the term.[18] This was very poor law and worse economics. The law of 1854 did certainly provide for a tax, and the suspicion is not without foundation that the railroad and plank road companies were responsible for its illegal enactment.

The question of uniformity next came before the Supreme Court in 1859, in the case of *Knowlton vs. the Supervisors of Rock County.*[19] Knowlton brought suit to have set aside the tax levied for 1854 in the City of Janesville. He contended that such tax was in violation of the rule of uniformity, since it was levied in accordance with a charter provison that agricultural lands within the territorial limits of the city should not be taxed more than one-half of one per cent for general city purposes, and for the support of the poor, repair and construction of roads and bridges at not more than one-half of the rate levied for such purposes on property within the recorded plat of the village of Janesville or in additions thereto. In the year 1854 the tax for current expenses had been on city property one per cent.

A majority of the court held that such discriminations in favor of the agricultural land were in violation of the rule of uniformity. The Court denied the right of the legislature to classify property as had been done in this case. It was held that the recognition of such a right would lead to an infinitude of classification that would make equality impossible. The

[18] *Reports of Wisconsin Supreme Court*, IX, 399-420.
[19] Ibid., 410.

argument advanced by the defendants that the clause in the constitution giving the legislature the right to declare what property should be taxed carried with it the right to exempt in whole or in part, the Court disposed of by showing that as soon as the legislature declares a specific kind of property to be taxable, the rule of uniformity becomes operative with respect to that property. Much stress was laid by the court upon the fact, so declared, that both classes of property received equal benefits and should therefore bear equal burdens.

The dissenting judge maintained that the legislature might classify property, and that if the classification of lands in Janesville according to their use was unconstitutional, the gross receipts tax on railroads and the bank tax must be unconstitutional, also the exemption of personal property to the amount of two hundred dollars, and that the court was reversing the decision reached in the Waukesha County case. In conclusion he said, "The section consists of two clauses, which operate upon and control each other. The legislature designates the kind, class or description of property upon which the taxes are to be levied, under the latter clause, and then the first clause of the section prescribes that the tax shall be levied upon the property so designated by a uniform law. . . . If the object and scope of the section were to produce equality, [he evidently meant such equality as precludes classification] the legislature should have been restrained from exercising any discretion in prescribing upon what property taxes should be laid." It should be noted that while the decision in this case denied the constitutionality of a certain kind of classification, it was not in conflict with the decision in the Waukesha case, since in that case the court held that the gross receipts tax was not a tax in the constitutional meaning of the term.

In 1860, however, in the case of the *Attorney-General vs. The Winnebago Lake and Fox River Plank Road Company,* the Court took another view of the tax.[20] In this case the Attorney-General brought suit against the company because the latter had failed for two years either to make a report of its

[20] *11 Wisconsin,* 35.

gross earnings as required by the law of 1854 or to pay its gross receipts tax. A majority of the Court held that "uniformity" meant equality and equality precluded classification. It was contended that the construction of the constitution that construed the uniformity clause as requiring uniformity only within a class would only prevent a part of a class from combining against the rest of the same class, an evil not likely to arise, while it would leave the way open for the combination of one class of property owners against the other classes, an evil that was always imminent, and against which it was the evident purpose of the framers of the constitution to guard. The Court declared that its construction on the rule of uniformity as securing equality secured as nearly as could be justice in the apportionment of the burdens of taxation, while the other construction seemed to regard the constitutional clause in question as designed "only to secure a sort of ornamental uniformity in the parts of an unequal rule, without affording any substantial benefit or protection."[21]

The Court in this case of 1860 rejected the argument made by the Court in 1855 in the Waukesha case, namely, that the law of 1854 provided for not a tax but a bonus paid for exemption. The payment prescribed in the Act of 1854 did not meet the requirements of a bonus, as laid down in the case of the *Mayor of Baltimore vs. the Baltimore and Ohio Railroad Company* (66 Gill., 291–2), in which case a bonus was defined as a consideration required by the legislature for the grant of a franchise, while a tax is something levied upon the franchise or its value after it is granted. A bonus is an element in a proposal offered by the legislature, which proposal may be accepted or declined by the parties to whom it is offered, whereas a tax is absolute and imperative and gives no option to the payer. It is clear that the payment required by the Act of 1854 was not a bonus, neither could it be a license, since its payment did not legalize something that could not be done unless so legalized, and since the primary object of the law was not police regulation but the raising of revenue. This payment might be

[21] *11 Wisconsin*, 37-41.

construed as a license granting exemption, but such a license would have no warrant in the constitution. The payment could certainly not have been a bonus for charters granted prior to the passage of the Act, and it is clear that it was not intended as such with respect to charters to be granted. Furthermore, the presumption was that the payment was a tax, since it was so called in the law. Thus in 1860 the highest court in the state denied the right of the legislature to classify property for purposes of taxation, and so declared the gross receipts tax on railroads unconstitutional.

The rule of *stare decisis* argued by the state was held to be of no force in this case. The probable social inexpediency as well as lack of fairness in taxing railroads and plank roads in the places through which they run was recognized by the Court, but the remedy was declared to be in the exemption of such parts as might seem advisable, leaving the remainder, if any, to be taxed by the uniform rule by which all other property was taxed.

As in the Knowlton case, Justice Cole again dissented from the opinion of the majority of the Court. Citing the Waukesha case, he expressed the opinion that it would be difficult to frame a law that would subject railroad and plank road property to the same mode of assessment and taxation in the various towns as was applied to other property, the administration of which law would not be characterized by much fraud and injustice. His argument, which was substantially the same as in the former case, may be summed up thus. If the legislature may, on the ground of public or social expediency, exempt railroad property, it may on the same ground prescribe a tax of one per cent on gross receipts, in lieu of all other taxes. The greater power includes the less. In imposing taxes the legislature, without violating the rule of uniformity, may classify property, as long as the same class of property is subject to the same rule of taxation throughout the district or jurisdiction for which the tax is raised. The power given the legislature to designate what property shall be taxed carries with it the power of exemption and classification.

The only effect of the decision of 1860 against the gross re-

ceipts tax was the enactment of a new law in which the term license was used instead of the term tax, and under this new law, which was the old law, changed as just indicated, the tax continued to be illegally collected until in 1862 the matter again came before the Supreme Court in the case of *Kneeland vs. the City of Milwaukee* and the validity of the gross receipts tax was put beyond question.[22] A majority of the Court, however, declared for the tax only on the ground of *stare decisis,* and it was only on a rehearing that this decision was reached. The Kneeland case turned clearly upon the question as to what the uniformity clause in the constitution means. Kneeland brought suit to restrain the issuance of tax deeds for certain pieces of property that the City of Milwaukee had sold for unpaid taxes. The ground of his plea was that the taxes levied in the City of Milwaukee for the years 1857, 1858 and 1859 were invalid, since the assessors had omitted from the assessment rolls certain real estate situated in that city. The city contended that all the property intentionally omitted belonged to railroad companies, the City and County of Milwaukee, and to literary, benevolent, charitable and scientific institutions, to churches, etc., all of which property was exempted by law. The facts were found to be substantially as the city represented them to be, consequently the case turned upon the meaning of the uniformity clause. The case was fought out entirely with reference to the validity of the gross receipts tax on railroads, which tax a majority of the Court held to be in violation of the rule of uniformity. The Court, however, felt bound by the Waukesha decision of 1855, since all the taxation of the state subsequent to 1854, and all private transactions related in any way to the taxation of railroads had been carried out upon the assumption that the railroad tax was valid. In view of the disastrous consequences that would have followed the overturning of the decision of 1855, the Court concluded on a rehearing that the decision in the Waukesha case should be abided by. The error made by the Court in 1855 was declared to have been so wrought into the texture of the Constitution, had so long con-

[22] *15 Wisconsin,* 454.

stituted the ground work and substratum of practice in taxation, and been so interwoven into the financial affairs of the state and of many private persons that it seemed that the error should have the force of law. Thus in 1862 the gross receipts tax was upheld on the ground of *stare decisis.*

Whatever may have been the motives of the Court, and we have no reason to question them, it is certainly to be commended for taking this high, broad, social ground rather than a narrow legal one. A decision against the law of 1854 would have invalidated all state taxes levied between 1854 and 1862, and would, as the Court declared, have wrought great confusion. To the writer, however, it seems that the Court retrogressed in finding the gross receipts tax in conflict with the rule of uniformity, which certainly does not prohibit reasonable classifications. Furthermore, it cannot be said that the tax was in violation of the second part of the taxation clause, which part declares that taxes shall be on property, for the gross receipts tax constituted but an indirect way of taxing property. It is admitted that such a tax works a different treatment of the payer than does a direct property tax, but the demands of expediency and fairness required the indirect method. The difficulty with the Wisconsin Court in this case was the difficulty that too often still affects our courts, the failure to see that the law should be progressive, that a strict interpretation of it should yield to the demands of social expediency.

It is recognized and admitted by the writer that in some states gross earnings taxes have been declared to be not property taxes, but the decisions of the federal Supreme Court and the conditions that obtained in Wisconsin at the time of its adoption of the gross earnings tax leave no doubt in the mind of the writer that the Wisconsin tax was substantially and to all intents and purposes a tax on property. In the case of the Philadelphia and Reading Railroad Company vs. Pennsylvania, the Supreme Court of the United States interpreted in two ways the gross earnings tax. In one part of its decisions the Court declared such a tax to be one on franchise; in another part it was held to be a tax on property. The Court said, "The tax is not levied, and indeed such a tax cannot be, until

the expiration of each half year and until the money received from freights and from other sources has actually come into the hands of the company. Then it has lost its distinctive character as freight earned, by having become incorporated in the general mass of the company's property."[23] Hence a tax on receipts is a tax on a part of the property of the company taxed. This construction, however, seems considerably strained, nor is it essential to the proof that the gross receipts tax is a property tax. In the first part of its decision in the Philadelphia and Reading case the Court held the tax to be a franchise tax, and as is well known the Court in the State Railroad Tax cases decided that franchises are property.[24] As might be expected, since the Supreme Court has so decided, and since it is clear that franchises are property, many state courts have decided likewise.*

However, while granting that the Wisconsin tax was a tax on franchise and therefore on property, those opposed to the idea that the Wisconsin tax was a tax on property, might urge that while the state had a right to impose this tax as a condition upon which foreign railroads might do business in the state, and also upon domestic companies incorporated after the adoption of the gross receipts tax, it had no right to place this condition upon domestic companies chartered prior to the adoption of the tax. Let us see if this is so. In 1854 and prior thereto the railroads in Wisconsin were taxed locally on their property and they suffered from the injustice that is bound to arise when an attempt is made to tax railroad property as property in general is taxed. The gross receipts tax was a great concession to the railroads; it decreased their taxes; it has always appealed to them; they have always in Wisconsin and are still fighting for it. Consequently, if the gross receipts tax law modified the charters of the Wisconsin roads in existence in 1854, it did so in a way favorable to the roads; nor can it be said that the

[23] *15 Wallace*, 284. Cited by F. J. Goodnow: *Taxation of Railway Gross Receipts* in *Political Science Quarterly*, IX, 233.

[24] *92 U. S.* 575.

* In a recent case Chief Justice Cassoday declared that the gross earnings taxed were property of the companies. *State of Wisconsin vs. Chicago and Northwestern Railroad Co.*, June 21, 1906.

legislature violated its public trust in providing for a gross earnings tax, for justice to the railroads demanded the abandonment of the local taxation of their property, and the interests of the public demanded such an extension, expansion and promotion of railways as it was hoped a preferential tax would assist. In 1854 the legislature, therefore, in order to do justice to the railroads and to promote the development of the state, exempted from taxation all other property of its railroads and placed a tax on their franchises, on a part of their property.

In 1881, in the case of the *Wisconsin Central Railroad Company vs. Taylor County et al.*, the Wisconsin Supreme Court took more advanced ground than prior to that year. In upholding the decision of 1855, the Court declared that the clause prescribing uniformity was merely a qualification of the clause that declares that taxes shall be levied upon such property as the legislature may prescribe. The legislature has the power to prescribe what property shall be taxed, and also to determine the rules by which it shall be taxed. While the language of the Court is not as clear as might be desired, it is fairly evident that in this case it was held that the Constitution allows a classification of property by the legislature, that the rule of uniformity demands no more than that all in the same class shall be treated alike, and that the classification be reasonable.[25]

The rule of uniformity has been discussed so far mainly with reference to the gross receipts tax on railroads and plank roads. The methods of taxation applied to many other kinds of property have also been tested by this rule. The finding of the State Supreme Court with respect to bank taxation is very interesting and exceedingly important. The decisions of the Court in the cases of *Knowlton vs. the Supervisors of Rock County* (the Janesville case) and of the *Attorney-General vs. the Winnebago Lake and Fox River Plank Road Company,* in which the Court had decided that the rule of uniformity required that all property taxed should be taxed equally and according to its just and true value, made questionable the validity of the law taxing banks on their shares of stock. The

[25] *52 Wisconsin*, 37.

matter came before the Court in 1860 in the case of the *State ex. rel. Reedsburg Bank vs. Hastings,* an amicable case brought into court in order that the validity of the bank tax law might be tested.[26] The case grew out of the retention by Hastings, who was State Treasurer, of certain bonds deposited with him by the Reedsburg Bank to secure its note circulation, which bonds were withheld to satisfy the unpaid taxes of the bank. It would seem that if the gross receipts tax on railroads were unconstitutional the bank tax also must be so, since it differed from the tax levied on property in general. The Court, however, decided otherwise, upholding the contention of the respondent, Treasurer Hastings, that the enactment of the bank tax law was not an ordinary act of the legislature, not an exercise of the general taxing power of that body, which power the uniformity clause was designed to limit, but that the enactment of the bank law was a kind of legislative act of the people, passed and adopted by them in their primary capacity, and in pursuance of a power reserved to them by the Constitution itself, and hence not subject to the constitutional restraints that were designed and intended to limit and control the action of the people's representatives, the legislature. It should be explained that the Constitution left to the people the question of banks or no banks, by providing that a banking act passed by the legislature should become law only when ratified by popular vote. The Court declared that the bank tax law emanated from the same source as the Constitution, and was therefore little inferior in dignity and importance to that instrument. The people reserved to themselves the power of legislating with respect to banks, and the silence of the Constitution on the subject, except with respect to this reservation, makes this power of the people free and unrestricted. The manner in which banks may be taxed in Wisconsin is in no way restricted or qualified by the constitutional rule limiting the taxing powers of the legislature.

There remains to be considered the question as to whether local assessments are in controvention of the rule of uniformity.

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[26] *12 Wisconsin,* 47.

This question as to whether assessments for local street improvements are in violation of the constitutional rule of uniformity came before the Supreme Court of the State in 1860, in the case of *Weeks vs. the City of Milwaukee et al.*[27] The Court declared, in this case, that if such assessments are to be sustained at all, they must be regarded as taxes and their levy as an exercise of the taxing power, for, if the theory that they are not taxes be carried to its logical conclusion, such assessments must constitute an appropriation of private property to public use without compensation, and hence they would be invalid. It was held that while they are essentially taxes, their authorization lies outside of the general taxation clause of the Constitution, and hence they are not subject to the rule of uniformity. The warrant for local assessments the Court declared to be found in section 3, article XI of the Constitution, which section reads as follows: "It shall be the duty of the legislature, and they are hereby empowered to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, *assessment,* contracting debts, and loaning their credit, so as to prevent abuses in *assessments* and taxation, and in contracting debts by such municipal corporations." It is clear from the concurrent use in this section of the terms taxation and assessment that assessment means something different from taxation in general. Because of the long established use of the term assessments to designate a tax supposed to be levied for special benefits accruing to the payer, we cannot escape the conclusion that the framers of the Constitution so used it. Furthermore, it is not reasonable to suppose that the term assessments was used in apposition with the term taxation, because the former when used in reference to taxation is never used alone, but always in such a phrase as the assessment of taxes. The same decision had been reached in Ohio.[28]

In the inheritance tax case of *Nunnemacher vs. the State,* decided June 21, 1906, the Supreme Court of the State held

[27] *10 Wisconsin,* 242.

[28] *4 Ohio Statutes,* 243.

The rule of uniformity in relation to inheritance taxes and the ad valorem tax on railroads is discussed in the chapters on *Inheritance Taxes* and *Railroad Taxation.*

that the Constitution does not confine taxation to taxes on property, that the provision that taxes shall be upon such property as the legislature shall prescribe means merely that the legislature may determine what property shall be taxed and what exempted[a]. According to this decision and another noted in the footnote the gross receipts tax on railroads was not a property tax.

III. Popular Interpretations of the Rule of Uniformity

The history of popular agitation in Wisconsin respecting the rule of uniformity centers about the years 1879 and 1880. The general business depression experienced by Wisconsin in 1879 resulted, as was inevitable, in a falling of property values, which fall in turn induced a flood of protests against special forms of taxation and against the exemption of certain kinds of property. In various parts of the state in the closing days of 1879 and the early part of 1880 the policy and the right of exempting from taxation any but public property was being agitated with much vigor, and arguments were being made to show that all classes of property should contribute equally to the support of the government that protected them equally.[29] Under date of December 22, 1879, a committee representing the City of Milwaukee drew up a memorial entitled: "Memorial of Citizens' Committee of Milwaukee, December 22, 1879, to the people, the press, and the legislature of Wisconsin."[30] This memorial was a plea for "Universal Equal Taxation," and a protest against exemptions and different rules of taxation for different classes of property. The gross receipts tax on railroads was declared to be exceptional and therefore in violation of the rule of uniformity. Railroads were taxed according to their productivity; other property was taxed whether productive or not. If railroads were taxed on earnings, why not other property also, was asked? If the railroads

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[a] Vide XII, also *State of Wisconsin vs. the Chicago and Northwestern Railroad Co.* decided June 21, 1906.

[29] *Governor's Message*, 1880, 6.

[30] *Wisconsin Miscellaneous Pamphlets* XXVIII, No. 7.

paid less under the gross receipts tax law than they would on an ad valorem basis, the gross receipts tax law worked injustice to other property; if they paid the same or more, they could not reasonably object to the change demanded by "universal equal taxation." It was declared that in view of the prevailing tendencies of public opinion and the temper of the people, it would not conduce to the interests of the railroads to in any way oppose "universal equal taxation, which, in view of the principles of justice and right, material progress, moral and religious advancement, the general good, the most perfect security and concord under the constitution and the laws demanded."

The tax on life insurance companies was also assailed. It was asserted that under the specious pretext of seeking charity for widows and orphans, life insurance companies and like institutions were in the habit of appearing before the state legislature "with mendicant whine and snivel" urging their claims to special consideration in the distribution of the burdens of taxation. Their "ubiquitous agents" were declared to be employed in creating a public sentiment in their behalf, by working upon the minds of their numerous policy holders, against the principle of "universal equal taxation," at least in so far as it applied to insurance companies. The method employed in taxing such companies was declared to be fostering and encouraging "this peculiar but useful means of private saving" at the expense of multitudinous industries and of the toiling masses. Only recently the writer heard a similar argument made by a Wisconsin legislator, who declared that preferential taxation of insurance companies amounts to a discrimination against those who because of physical disability or infirmity cannot invest in life insurance. While attacking the insurance tax so vigorously, the citizens of Milwaukee acknowledged very frankly that the wide-spread character of the insurance business and the employment of dissimilar and unequal methods of taxation in the different states makes it impossible for the state to deal with the insurance companies on the basis of uniform and equal taxation, without the aid of Congress, for which aid it was recommended that the state should ask.

These citizens of Milwaukee and also many others protested vigorously against the exemption of church property. So considerable was the sentiment at this time against the exemption of such property that even a church paper, the *Christian Statesman*, came out against it.[31] In the issue of that paper dated January 8, 1880, its editor, in a vigorous editorial protesting against many exemptions of private property and declaring such exemptions and different rules of taxation for different classes of property to be in contravention of the constitutional rule of uniformity, affirmed that the exemption of church property contravened not only that rule but also Article I, Section 18 of the Wisconsin Declaration of Rights, which section guarantees freedom of worship and freedom from involuntary support of any church or minister. The editor maintained that the exemption of religious property was becoming more and more a cause of irritation and of hostility to religion itself and that "the devout, just and patriotic of every religious faith were no longer willing to enjoy the advantages of their churches and the blessings and consolations of religion at the expense of tax payers." This editorial was inspired by a narrow conception of the benefit theory of taxation. The writer of it admitted the social service of the church, but his complete lack of the social utility point of view precluded his seeing any difference between exempting churches and exempting all manufactories.

A very unique argument in favor of the exemption of church property is to be found in a letter that appeared in the *State Journal* for January 24, 1880.[32] The writer took the ground that churches were public property and could therefore be exempted as other public property is. This individual was evidently as far afield as the writer in the *Christian Statesman*. He contended that to tax church property would amount to an infringement upon "the right of every man to worship Almighty God according to the dictates of his own conscience." The absurdity of such an argument is obvious. It would be just as reasonable to contend that taxation of factories constituted an unwarranted infringement upon industrial freedom. The true

[31] *Wisconsin Miscellaneous Pamphlets*, XI.
[32] Ibid.

argument for the exemption of church property is that churches perform a social service and that such exemption encourages an increase and growth of such institutions which even the most skeptical infidel, if he be intelligent, must acknowlege to be a mighty force for law, order and social uplifting.

The argument that the exempting of church property from taxation constitutes a violation of the clause in the Declaration of Rights insuring all persons against compulsory support of a church is obviously invalid. The purpose of the clause is obviously to prevent compulsory support of a particular church, whereas an exemption of church property in general compels the tax payer to contribute, and only indirectly and to a slight extent, to all churches. There is no discrimination between sects or churches. Social utility justifies the exemption of church property, provided that such property is used for church purposes and is necessary to such use. A tax payer might just as reasonably claim exemption from taxation for police purposes, because he has never had anyone arrested, as to contend that he ought not to be forced to contribute to the support of churches, through their exemption, since he never attended services. Whether he attends services or not, the church renders him a service by rendering a service to society, of which he is a member. There is, however, much to be considered in the argument that as many churches are frequented by the wealthy the exemption of church property increases the burdens of the poor. It may be desirable to tax churches above a certain size and value, but the constitutionality of such a tax is extremely doubtful.

The Senate committee to which were referred the memorials to the Legislature asking that church property be taxed reported in favor of a continuation of the church property exemption.[33] The committee held first of all that churches benefit society to the full amount of the taxes that would be levied upon them, and that they contribute more to preserving order, enforcing law, and defending right than do police courts and penitentiaries; secondly, the committee contended that church property should not be taxed, because as such it has no exchangeable value,

[33] *Senate Journal 1880*, 287; also *Wisconsin Miscellaneous Pamphlets*, XIV.

and if it were converted into productive property, the aggregate taxable value of the property in any district would not be increased, since the coming into the competitive field of the church property would lessen by its value the value of all other property in the district. The argument advanced in one of the memorials that many churches were becoming too strong and ought to be curbed by taxation, the committee very correctly declared to be weak, as the effect of a tax would be to destroy the weak churches and consequently to increase the strength and power of the strong, wealthy churches by giving them a monopoly of the field. The argument that many support and few enjoy the churches was met by pointing out that the same is just as true of public libraries. The committee observed that all support hospitals for the insane, yet all are not mad; all support public educational institutions, yet many families educate their children in private schools, while many have no children to be educated. It was acknowledged by the committee that church property not used for strictly church purposes sometimes escapes taxation in other states and possibly sometimes in Wisconsin, but it was sensibly contended that such evasion constitutes no argument against the principle of exemption. The committee very properly viewed the whole matter in the light of social utility, of public expediency.

CHAPTER III

PUBLIC DEBT AND STATE CREDIT

The Constitution of the State of Wisconsin, as has been shown in the chapter on "Finances and the Constitution;" limits the bonded or otherwise secured debt of the state to $100,000, except for purposes of military defense or war. In the very first year of the state's existence, 1848, for the purpose of defraying the expenses of the legislature, an attempt was made to negotiate a loan of $20,000 in gold and silver. The rate was not to exceed twelve per cent and the loan was to be payable in from six to twelve months according to the arrangements that the state treasurer might be able to make with lenders.[1] That officer reported, however, that he was entirely unable to float the loan, whereupon a bill was introduced providing for a loan of $10,000 from Alexander Mitchell, the proprietor of the Wisconsin Marine and Fire Insurance Company. This bill, however, met with little favor, presumably because Mitchell, as the Wisconsin Marine and Fire Insurance Company, was conducting a bank of issue contrary to law.[2] After considerable debate the issue of State Warrants drawing twelve per cent was authorized.[3] State orders continued to circulate until 1858, when the legislature by resolution directed that all orders, certificates of appropriations, and secretary of state's warrants on the treasury should be passed directly to the state treasury, and that they should be paid in the order in which they were dated, and only to the persons in whose favor they were drawn. Throughout this period of ten years, from 1848 to 1858, the expenses of the state were always in advance of the receipts, and state orders passed current

[1] *Milwaukee Sentinel*, August 15, 1848.
[2] Ibid., August 23, 1848.
[3] Ibid., August 25, 1848.

at about eighty per cent.[4] The low condition of the state's credit in the early days was due to two facts; first, to the delay in paying public debts, and second, to the practice of deferring the payment of old bills simply because they were old, and in the very early days to the additional fact that the legislature had failed to provide for a way in which the state might be sued, a matter left by the constitution to the legislature.[5] In 1849, the condition of the state's finances was very low indeed. The legislature, fearing that there was not more than enough in the treasury to pay its members, passed over the Governor's veto the so-called "hog bill" appropriating the money necessary to pay the legislators.[6] At that time the prospects of the state were said to be such that its creditors could not be paid for years.[7] In 1859 the Governor, in his message, observed that, because of overestimates of revenue and underestimates of expenses by the secretary of state, a floating debt had been accumulating gradually, year by year, notwithstanding the constitutional provisions that a deficit in any year must be made up in the year following. In the year ending September 30, 1858, there was a deficit of $70,340. The defalcation of a former State Treasurer added $32,258. Owing to the panic of 1857, the taxes were not paid in 1858, making a total deficit of $181,361.[8] The treasury, however, soon recovered from its sad conditon of 1858. At the end of the next fiscal year there was an apparent balance of $11,205, apparent, because the State Printer had a disputed claim of $38,762 against the state.

Wisconsin's first bonded debt was created in 1852, for the purpose of defraying various extraordinary expenditures, namely, for the unpaid expenses of the legislature of 1852, the appropriations made for furnishing the asylum for the blind, for the printing of the laws and journals of 1852, the debt inherited from the Territory, the keeping of prisoners, and the appropriations that might be made for a state prison. The bonds authorized, $50,000 in the aggregate, were to be of the denom-

[4] *Governor's Message 1862*, 17.
[5] *Wisconsin Argus*, March 6 and 20, 1849.
[6] *Laws of 1849*, ch. 22.
[7] *Wisconsin Argus*, March 20, 1849.
[8] *Governor's Message, 1859*, 1.

ination $1,000, payable in five years, as the constitution required, and were to bear interest at not to exceed eight per cent, payable annually, either in Wisconsin or in New York City.[9] The bonds issued at this time bore interest at eight per cent and sold at a discount of two per cent. There was considerable hue and cry at the time this loan was floated because paper money was received for the bonds. However, as the paper was paid out again at par the state sustained no loss.[10]

In 1858 for the purposes of defraying the expenses of enlarging the capitol, erecting a hospital for the insane and a house of refuge, the state floated another loan of $50,000. The bonds issued were of the denomination $1,000, were payable in five years, and bore interest at six per cent, payable semi-annually. They were not to be sold below par, and were to be paid for in coin or in the bonds of 1852 at par.[11] The bonds of 1858 were redeemed from the general fund in 1863. These two issues of bonds were the only ones made by the state prior to the creation of the Civil War Debt. It should be noted that in each case the law provides not for an annual tax levy for five years for the payment of the principal of the debt, but for a levy to be made in the year next preceding the time when the bonds should fall due.

Before we proceed to the discussion of the War Debt, it might be noted that in 1862, for the purpose of enlarging the capitol and erecting a hospital for the insane, bonds for $50,000 were sold, and in 1863 for capitol enlargement another $50,000 worth of bonds was issued. These bonds sold at par, and bore interest at six per cent, payable semi-annually.[12]

In 1861 the legislature in special session authorized a loan for public defense of not to exceed one million dollars. The bonds to be issued were to be in denominations of not less than $100 nor more than $1,000. The rate of interest was to be six per cent, payable on the first of January and of July each year, and payable in the case of bonds of denominations of $500 or more

[9] *Laws of 1852*, ch. 341.
[10] *Wisconsin Argus*, May 5, 1852.
[11] *Laws of 1858*, ch. 20.
[12] *Laws of 1862*, ch. 226; *Laws of 1863*, ch. 108; *Secretary of State's Report*, 1874, 10; Ibid., 1889-90, 284.

at some bank in New York City to be designated by the state treasurer, and in the case of smaller bonds at the state treasury. Not less than 60 per cent of the amount received for the bonds was to be in gold or silver coin, but at the discretion of the bond commissioners, who were the governor, state treasurer, and the secretary of state, 40 per cent might be received in the currency of Wisconsin banks, provided, however, that the currency of no bank should be received unless it be at par, "estimating its value by the then market value of its securities on deposit with the comptroller of the currency." This provision relating to the parity of Wisconsin bank notes is a little obscure, but it evidently means that the notes of no bank were to be received for bonds unless the full legal security for them was on deposit with the bank comptroller. It was provided in the law that all wages and salaries paid to officers and soldiers out of the War Fund, to be created by the sale of these bonds, were to be in specie. The first $100,000 of the bonds was to be redeemed on July 1, 1877, and $100,000 on the first of each succeeding July until all were redeemed. The secretary of state was to levy an annual tax for the payment of the interest on the bonds, and beginning with 1877 a tax was to be levied each year to pay the principal of the bonds becoming due in that year. The law provided that the commissioners should negotiate the loan "on the most favorable terms, which in their judgment can be obtained."[13]

In the opinion of the writer the floating of the million dollar loan was a fine piece of financiering. Of course, the bond commissioners turned first to New York City, but inquiry soon revealed the fact that the bonds could be sold in that great money market only at great discount, if at all. The New York capitalists objected to the form in which the law authorizing the loan was drawn. They claimed that it was drawn in such a way as to compel sale at par.[14] As has already been noted, however, the law provided very clearly and distinctly that the commissioners

[13] *General Laws (Special Session)*, 1861, ch. 13.

[14] Hastings, Samuel D.: *The Negotiation of the State Loan*, a pamphlet. Mr. Hastings was one of the bond commissioners. His pamphlet was written shortly after the negotiation of the loan.

might contract the debt "on the most favorable terms which in their judgment can be obtained."[15] It is possible that this claim of a flaw in the law was only a pretext for offering a low price for the Wisconsin State bonds, which were in all probability discredited by the unpaid interest on Wisconsin municipal bonds and railroad bonds secured by the pledges of Wisconsin municipalities.[16] Wisconsin could hardly have gotten more than 70 for its bonds in Wall Street if, indeed, they could have been sold at all. At that time, in the New York market, United States bonds were selling at 83, Illinois bonds at 74; Michigan seven per cents, at 80; Iowa six per cents, at 70; and California six per cents, at 63.[17] The final conference of the bond commissioners was held June 25, the day after the Bank riot in Milwaukee, at a time of intense and painful excitement. A disastrous financial panic seemed imminent. Two months previous about half of the currency of the banks of the state had been discredited, and the people had lost a million dollars. A serious crisis was imminent. If the rest of the bank currency had been discredited, another million would have been lost, business would have been prostrated, the banks crippled, and the state embarrassed. The failure of the banks would have resulted in virtual bankruptcy for the state government, which had in its possession $150,000 in Wisconsin bank notes.[18] Such was the painful and critical situation, when the bond commissioners met and made such an arrangement with the Wisconsin bankers as both brought money into the state treasury and saved the banks and the business interests of the state from ruin. The bankers agreed to take at par $800,000 worth of state bonds. Seventy per cent of the amount was to be paid in cash down, and the remaining thirty per cent in installments of one per cent every six months. The corporate bond of each bank buying bonds was given to secure this thirty per cent. Sixty per cent of the amount paid down was to be specie or New York exchange; forty per cent might be in current bank bills. The

[15] *General Laws of 1861 (Special Session)*, ch. 13.
[16] Hastings; supra.
[17] Appendix, *Senate Journal, 1862*, 1143.
[18] Hasting, supra.

bonds were to be held by the Bank Comptroller as security for Wisconsin bank currency in circulation. It was agreed between the bankers and the loan commissioners that the current notes of the banks should be brought up to par by the deposit of additional securities with the comptroller. The securities then held by the comptroller, which were for the most part those of southern states, the rapid depreciation of which securities was having a baneful influence on Wisconsin currency, were to be sold by that officer in sufficient number to provide the specie payment for the Wisconsin bonds. In other words, the Wisconsin bonds were to be substituted for other bonds then furnishing an insufficient and uncertain security for Wisconsin bank notes.[19] The southern bonds sold did not yield enough by $100,000 to bring the Wisconsin currency up to par; this deficiency was supplied by the bankers and merchants of Milwaukee.[20] The plan for floating this loan of $800,000 was expeditiously carried out. On October first the comptroller in his annual report for that year stated that all the bonds had been taken and were on deposit with the state treasurer.[21] It is worthy of notice that in the year preceding this report, the stocks of southern states deposited to secure the Wisconsin bank notes in circulation had fallen from two-thirds of the total stocks deposited for that purpose to a little over one-fourth.[22] Later $116,000 worth of bonds were sold for eighty per cent in cash down and the remaining twenty per cent in half year installments of one per cent cash. The rest of the million dollar loan was made for cash and at par.[23]

In the opinion of the writer, the loan commissioners should have received general commendation for the highly creditable way in which they floated this large loan, at a time when the money market was in a most unsettled condition. The results justify this opinion. Within five years the state had realized 88 per cent on these bonds, notwithstanding that it was found in closing up some of the banks that, since the note holders had

[19] *Secretary of State's Report, 1861,* 227.
[20] Hastings, supra.
[21] *Bank Comptroller's Report, 1861,* 8.
[22] Ibid., 11.
[23] *Report of State Treasurer,* 1866, 9.

a claim prior to that of the state, there was not enough to pay the amounts due the state for the bonds. At that time, from banks in good standing there was due only $41,620. Banks failing and assigning their bonds, according to law, to the state, assigned also the benefits of their lost circulation. These two sources, it was estimated, would bring the aggregate receipts for the bonds up to 92 per cent.[24] However, the loan commissioners were vigorously assailed for the so-called diverting of the purpose of the bonds by making them security for the state bank currency. It is very clear, however, that they acted most wisely. As a defect in the loan law was charged, another session of the legislature would have been necessary before the bonds could have been sold in the east. All evidence indicates that the 70 per cent realized at once was all that could have been obtained in Wall Street. Besides, the state was reasonably certain of ultimately receiving all of the additional thirty per cent, as it was agreed between the bankers and the commissioners that the state treasurer should take the semi-annual payment on this thirty per cent out of the interest accruing on the bonds, if such payment were not made.[25] Furthermore, if the bonds had not been disposed of as they were, the expense and delay of another extra session of the legislature would have been necessary. The plan adopted kept the amount of discount in the state; relief and protection were afforded Wisconsin's business interests and her people in general, since their currency, then rapidly declining, was saved from discredit and repudiation.[26] "The sale to Wisconsin bankers saved the banks from runs, the currency from depreciation, and the state from financial distress, if not from panic."[27] The plan followed by the loan commissioners not only accomplished all this, but it furnished a fund of nearly three quarters of a million for the equipment of the militia that Wisconsin sent out to defend the Union. By October first, all but $160,500 of the million dollar issue of bonds had been sold.

Because of the proponderating importance of the million

[24] *The Commercial and Financial Chronicle, 1866.* III, 388; *Hunt's Merchant's Magazine,* IV, 283.
[25] *Bank Comptroller's Report,* 1861, 8.
[26] *Secretary of State's Report,* 1861, 228.
[27] Appendix, *Senate Journal,* 1862, 1143.

dollar bond issue, the writer has departed slightly from the chronological order in his treatment of the war debt. Wisconsin was very prompt in providing funds for putting its troops at the service of the Federal Government. By an Act approved April 13, 1861, the legislature authorized the issue of $100,000 worth of bonds provided that the President should call for troops. These bonds were to be of the denomination $1,000, payable in five years and were to bear interest at six per cent, payable semi-annually. They were not to be sold below par. By an Act approved April 16, the amount of the bonds was increased to $200,000.[28] On April 15, President Lincoln called for troops, and in May the Wisconsin legislature authorized the million dollar loan. Owing to the par clause, it was found impossible to float the $200,000 loan. Up to September 30, 1861, only twelve of these bonds had been sold.[29] Prior to January 1, 1862, owing to the unsettled state of the money market, the officers of the state found it difficult to sell bonds at par and at the same time get full payment down, but after that date no difficulty was experienced.[30]

While in all probability the difficulty just noted was due in the main, if not entirely, to the unsettled condition of the money market, Governor Harvey thought that another cause was to be found in the financial misfortunes of Wisconsin municipalities, many of which were hopelessly in debt. State Treasurer Hastings shared this belief of the Governor's. In his message of 1862, Governor Harvey spoke at some length of public debt. In his opinion the state had benefited greatly from the clause in the constitution prohibiting, except for war purposes or public defense, the contracting of a large state debt. By 1862, the state had constructed buildings for a capitol,* state prison, and humane institutions at a cost of only $773,516. These buildings had been paid for by an annual tax equal to the interest on a

[28] *Laws of 1861*, chs. 239, 307.

[29] *Secretary of State's Report*, 1861 (in section on State Loan).

[30] *Secretary of State's Report*, 1862, 903.

* The main part of the Capitol was begun in the territorial period. In 1838 Congress appropriated $20,000 for its completion, but owing to a wrong application of the funds the building remained unfinished until 1844, when the County of Dane completed it at a cost of about $2,000. *Hunt's Merchants' Magazine*, XXXIX, 64.

million dollars. He was certain that the buildings would have cost much more if they had been built with borrowed money, because of the speculative character of the times and the extravagance that characterizes the expenditure of money borrowed on public credit. The Governor declared that more than one-half of the sums spent for University buildings had been paid for interest and that the debt of the University was increasing yearly. Apropos of the recklessness of local communities in plunging into debt, Governor Harvey spoke very highly of the wisdom of the framers of the constitution in forbidding the use of state credit in the furthering of internal improvements. He said, "Had our constitution permitted the use of state credit for works of internal improvement, we can at this day scarcely form an adequate idea of the pressure of interests that would have combined to plunge the state into debt. In the past era of speculation, our people were well nigh intoxicated with their schemes of improvement in the way of building railroads, etc." As it was necessary to get credit in some way for the promotion of such enterprises, upon the cities, towns, and land owners of the state had fallen the burden that the state had escaped. It may be noted in this connection that in 1859, certain railroads in Wisconsin proposed that the constitution be so amended that the state should guarantee the city, county, and town bonds issued in aid of various railroad projects. Such bonds amounted at that time to $7,265,000.[31] If the railroads of Wisconsin could have been built with cash, no general disaster would have befallen them or their creditors, but they were built on credit, the character of which made necessary large discounts; extravagance marked the expenditure of the money obtained and private speculation among their managers completed the bankruptcy and ruin of the companies, in the failure of which municipal corporations and thousands of citizens became hopelessly involved. All the property in many cities was said to have been worth hardly their bonded debt and the unpaid interest thereon. Thousands of small farmers throughout the state were, as a result of having pledged support to railroad projects, hopelessly

[31] *The Bankers' Magazine*, 1859, 717.

in debt. These misfortunes of citizens and municipalities, the Governor thought, affected adversely the credit of the state. He very wisely recommended a constitutional limitation on the power of counties, cities, and towns to contract debts.[32]

It may be observed that in 1872 another Governor laid much stress upon the reckless loaning of public credit to railroads by local administrative bodies. Some of the most promising towns in the state, in the expectation that a proposed railroad would add largely to their business and their prosperity had loaned far beyond their ability to pay, and, instead of being in the enjoyment of the expected advantages, were buried beneath almost hopeless debt. It was recommended that towns, counties, and cities be prohibited from contracting in aid of any railroad or other public improvement a debt in excess of five per cent of the assessed value of their property.[33] The amendment of November 1874 went further and limited their aggregate debt for all purposes to five per cent of the assessed value of their property.

In 1862, the legislature authorized an additional war loan of $200,000. These bonds bore interest at six per cent, to be paid semi-annually. One half of this loan was payable July 1, 1887, and the other half, the first of the next July.[34] By another law of 1862, the commissioners of school and university lands were authorized and directed to give preference to the bonds of the state in investing the trust funds.[35] The $103,000 of war bonds remaining unsold were therefore converted into certificates of indebtedness to the school fund.

In the following year still another war loan was authorized. The governor, secretary of state, and the state treasurer were authorized to negotiate a loan of $350,000, the same to be at their discretion either in coupon bonds or in certificates of indebtedness to the school fund or in both. Another loan of $350,000 was authorized in 1864, the next year.[36] Of this $700,000, the school fund took up $605,000. Of the $850,000

[32] *Governor's Message*, 1862, 19.
[33] *Governor's Message*, 1872, 23-24.
[34] *Laws of 1862*, ch. 228.
[35] Ibid., ch. 89.
[36] *Laws of 1863*, ch. 157; *Laws of 1864*, ch. 360.

loan authorized in 1865, $623,000 came from the school fund. At the same time the school land commissioners invested $700 in outstanding state bonds; therefore, up to the end of 1865, the state had borrowed from the trust funds $1,331,700, which debt was in the form of certificates of indebtedness. In 1865 bonds to the amount of $548,800 were redeemed, leaving outstanding in the form of bonds $847,500, or a total debt of $2,179,200.

By June 1, 1866, the debt of the state to the trust funds had increased to $1,841,900 of which $478,900 had been paid for bonds and $1,363,000 for certificates of indebtedness, as provided by laws of 1863, 1864, 1865. The total amount of bonds outstanding had been reduced to $472,300. By the end of the year by redemption from the general fund the amount had been reduced to $440,100. The commissioners of school and university lands continued to invest in the bonds of the state, and in 1868 bonds to the amount of $27,000 were redeemed. By 1886 only $1,000 in bonds was outstanding and these were redeemed August 13, 1888. All of the bonds of the state had been either redeemed or converted into certificates of indebtedness to the trust funds. The total amount of this indebtedness was and is now $2,251,000.[37]

The direct war tax levied on Wisconsin and amounting to $519,688.67 was more than paid by expenditures of the state for the equipping of troops, by the fifteen per cent discount allowed for collection, by the amounts due from the five per cent land fund, and from the swamp land indemnity. The balance due the state from the National Government, the sum of $8,409.43 was paid April 25, 1888.[38]

For war purposes Wisconsin issued $1,400,000 worth of bonds, for which was received $1,110,229.69. The state taxes on account of the War amounted to $674,659.

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[37] *Secretary of State's Report*, 1889-90, 283-87.
The distribution of this debt is as follows:

To School Fund	$1,563,700
To Normal School Fund	515,700
To University Fund	111,000
To Agricultural College Fund	60,600
	$2,251,000

Secretary of State's Report, 1903-04, 28.

[38] *Secretary of State's Report*, 1889-90, 283-87.

The following exhibit shows the receipts and expenditures of the War Fund.[39] No bonded debt has been contracted since the war debts were contracted.

Receipts.

Bonds sold	$1,110,239 69
Certificates of indebtedness	1,401,000 00
United States on account of advances	874,517 92
Temporary loan from general fund	195,000 00
Miscellaneous	129,631 55
Total	$4,335,033 41

Expenditures.

Military account	$ 184,187 36
Volunteer aid	2,702,703 09
Paymaster General	779,008 21
Secretary of state and treasurer as disbursing officers	239,081 61
Repayment of loan from the general fund	198,716 75
Total	$4,335,033 41

[39] Ibid., 276.

CHAPTER IV

THE ADMINISTRATION OF THE TRUST FUNDS

The trust funds of the state are the School Fund, the University Fund, the Normal School Fund, and the Agricultural College Fund. For a short time there was also a Railroad Farm Mortgage Fund. The genesis and nature of each of these funds is explained in the chapter on "The Financial Administration of the State Departments." Such colossal fraud and corruption characterized the administration of the education funds in the early years of the state's history, especially during the regime of the "Forty Thieves," which began in 1850, that the people of Wisconsin are today paying taxes for education that they would have no need of paying, if the trust funds had been honestly and efficiently administered, and if the lands serving as the basis of the funds had been disposed of with a view to promoting the welfare of the state, instead of furthering the private interests of corrupt public officers and land speculators.

The first law providing for the investment of the trust funds required that the school and university land commissioners, who were the secretary of state, state treasurer, and the attorney-general, make loans of all moneys received into the funds to the citizens of Wisconsin, upon real estate security. All moneys arising from the sale of lands in any county were to be set aside and loaned to individual citizens residing in that county. This law appears to be one that might have insured the safety and integrity of the funds, but the administration of it was so lax and corrupt that it worked great losses to the funds for education. The following are the important provisions of the law. In appraising land offered as security for loans, the commissioners were not to include perishable improvements. From the person applying for a loan the commissioners

were each to receive one dollar a day for making the required appraisal. No greater sum than $500 nor a sum less than $100 was to be loaned to any one person. The interest at seven per cent was payable annually in advance. No loan was to be made for a longer time than five years, but it was provided that the payment of the principal might be deferred from year to year even after five years, provided that the interest was paid, but the legislature might at any time change the law so as to require payment at any time after one year from the time when the original five year credit expired. The principal might be paid in whole or in part at any time when interest fell due. The sum loaned was not to exceed one-half of the appraised value of the property offered as security, and the commissioners might reduce the amount loaned on any piece of property whenever they had good cause to believe that the valuation on the property was not in proportion to the prices of similar property being sold in the neighborhood. The expense of recording the mortgage given was to be borne by the borrower. In case of non-payment of interest or of principal when due, the commissioners, after advertising the sale, were to sell at auction and for cash so much of the land as would pay the amount of the principal due, interest due, five per cent damages of the whole amount due, and the cost of advertising and selling. In case no bid sufficiently high was received, the commissioners were to bid the land in for the proper fund, and as soon thereafter as possible to sell the property to the highest bidder for cash or on five years' time. If the mortgaged property in any case was sold for more than the amount due the fund and damages and expenses, the surplus was to be paid over to the mortgagor, his heirs or assigns. This law honestly and efficiently administered would have worked satisfactorily and the integrity of the funds would have been secure.[1]

As early as 1851 complaints were made that in some instances loans were made from the school fund upon insufficient security. Governor Farwell was unable to ascertain whether these complaints had any basis in fact, but subsequent disclosures proved

[1] *Revised Statutes*, 1849, ch. 24, secs. 64-76, 89, 98.

that they had. The Governor declared against the policy of loaning the school fund to individuals, not only because of the liability to loss in many cases, but also because the policy was partial in its benefits. He advocated that the fund be used for the support of the normal school, in the benefits of which the poor and the needy might participate.[2] Just what his plan was he did not indicate. A typical case illustrating the frauds practiced in the land office was unearthed in 1852. In 1851 there was loaned from the trust funds to G. H. Barstow, brother of the then Secretary of State, the sum of $350. The mortgage given by Barstow was not recorded for ten months. The land mortgaged was assessed at $85 and it was said that it would not have brought $100 at a forced sale. Besides, judgments against Barstow for $75 and $500 took precedence of the mortgage to the school fund. A full investigation was made of this case, and records supported by affidavits show that the above were the facts.[3]

The frauds in the land office were fully revealed in 1856.* When at the begining of that year, State Treasurer Edward H. Janssen retired from office he was short in his accounts a sum variously estimated from $40,000 to $75,000, but which proved to be $34,974.[4] Various credits given to Janssen finally reduced his shortage to $31,318.54. This shortage led to the appointment of a select committee of the legislature to investigate the offices of the state treasurer, of the secretary of state, and the school land office, and to carry the investigation back to the beginning of the state government.

The school land commissioners during the administration immediately preceding 1856 were E. H. Janssen, State Treasurer, A. T. Gray, Secretary of State, and George B. Smith, Attorney-General. Daniel M. Seaver, Deputy Treasurer, was acting commissioner during Janssen's absence, which was considerable.

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[2] *Governor's Message*, 1851.

[3] *Argus*, Feb. 25, 1852.

* In 1855 numerous persons complained that they could not get their claims on the State Treasury satisfied, and it was said in the legislature that the postmaster at Madison had given notice that after a certain day he would cease to give the state credit for postage stamps.

[4] *Milwaukee Sentinel*, Feb. 16, 1856.

William A. Barstow was Governor. Barstow and his ring are known in Wisconsin history as "The Forty Thieves." The disclosures of fraud in the land office lead one to believe that they deserved this title.

The legislative investigation showed the grossest frauds in connection with the sale of state lands and the administration of the trust funds. Testimony given before the committee, and evidence in the records of the school land office reveal a constant violation of the law prohibiting the commissioners and their clerks from buying state lands. It was the practice of persons in the commissioners' office to mark certain lands "sold" or "reserved for sale" thus giving themselves or their friends time to examine the lands. Entries in lead pencil showed that certain lands were reserved for certain persons. One entry read "To be kept for William A. Barstow." William A. Barstow was the Governor of the State. The law required the sale of land at auction. More light was thrown upon the shameful way in which the land office was administered by the testimony of a clerk who swore that while in March, 1855, the bill to restrict the amount of land to be sold to one person was pending, he by the direction of one of his superiors marked certain unsold lands "sold to Daniel Howell." Daniel Howell swore before the committee that he had never had any interest in the lands entered in his name. In some cases lands were actually stolen by those in the land office. In one case, W. H. Besley, chief clerk in the land office, using the name of Daniel Howell, came into possession of a whole section, which had already been sold on time and on the balance of the purchase price of which one James Ludington was paying interest. Besley secured a patent to the land, which was section 16, town 13, range 22, and he admitted before the committee that he paid nothing for it. From beginning to end this nefarious business was contrary to law. In the first place, the law required that application for the purchase of any piece of land be filed with the secretary of state. Besley had entered this land at one shilling an acre; it had already been sold for twelve shillings an acre; besides, the law fixed a minimum price of $1.25 an acre.

The whole business of the office was conducted in a grossly

careless and negligent manner and without regard to law. The law in order to prevent the issue of land certificates before the payment of the sums required by law to be paid provided that such certificates should be countersigned by the secretary of state. This provision was disregarded. It was customary for that officer, the attorney-general, and the treasurer, the land commissioners, to sign certificates in blank, which thus signed were left lying about in the office where everyone had access to them. It was the practice to deliver certificates to certain persons upon their promising to pay the Treasurer the amounts required, but no trouble was ever taken to see whether they kept their promise. Consequently, there were issued a large number of certificates upon which nothing was ever paid. This was true of many certificates issued in the names of Daniel Howell, William Chappell, and E. H. Gleason, in which certificates persons in the office had an interest. The practice of signing certificates in blank dated back to July, 1854, when the land office was separated from the Treasurer's office. These fraudulently obtained certificates were in many if not in all cases sold to bona-fide purchasers, who perhaps had no knowledge of the fraud connected with them. The traceable loss to the education funds because of these particular frauds amounted to $16,245.94. It might be explained that land certificates were receipts for the amount required to be paid down on land and for interest on the balance to the following January. Title to land sold on credit remained in the state until payment in full was made. Another loss ascertainable to the extent of $23,-678.77 arose from either the non-payment of penalties or their non-entry on the books. The law provided that persons who failed to pay interest on a loan or on money owed for school lands within the time fixed by statute should forfeit to the state five per cent of the amount due. Some cases were discovered in which the penalty had been paid, but the Treasurer's books showed no corresponding entry. The total loss to the trust funds through this and other frauds there is no means of determining.

It has already been pointed out that the clerks in the land office entered lands for themselves. One clerk, Byrne by name,

testified that he had received permission from all the commissioners to enter lands. He maintained that he had a right to enter lands and if the commissioners considered his doing so inconsistent with his holding a clerkship in the school land office, he was willing to be discharged. He continued to enter lands and was retained as clerk for more than a year. The Attorney-General had objected to Byrne's entering large quantities of land. By thus objecting he made it evident that he interpreted the law forbidding the commissioners to buy lands as applying also to their clerks. The mere entry of lands by the clerks, while it would work injustice to would-be purchasers outside of the office, would not necessarily injure the school fund, but this practice was connected with rascality in addition to that already indicated.

A certain letter written by some one in New York to Besley, the chief clerk in the land office, revealed the fact that a trade in land certificates was being carried on between the land office and some organized association or company in New York City. This letter, after it had been gained possession of by the investigating committee but before a copy of it had been made, unfortunately was allowed to fall into the hands of Besley, who refused to deliver it to the committee. However, the testimony of General William R. Smith, who had read the letter, revealed the general purport of its contents. The latter disclosed the fact that there was an organized club or company for the purpose of entering school lands or purchasing certificates in order to sell them again in New York or elsewhere. The writer of the letter was an operator for this company. The letter indicated that some person under a disguised name was in New York and another person was in Madison or was expected to go from Madison to New York. In this connection it should be recalled that the clerks in the land office had at their disposal certificates signed in blank, and that certificates were taken from the office without payments having been made for them. Furthermore, the testimony of Treasurer Janssen, substantiated by an investigation of his books, showed that money due on a great deal of land was never paid, and that the Commissioners, Smith and Gray, and the clerks in the land office were interested in

these lands. The testimony of a clerk named Frary revealed the fact that Charles I. Kane and Company of New York were agents for school land certificates and that certificates were sent to them for sale. Assistant-Treasurer Seaver testified that many certificates were signed in blank by the Commissioners, afterward filled in by the clerks, put into the market and sold just as other property. Some were sent to New York. Besley, the chief clerk, made frequent trips to that city. All this evidence proved, in the opinion of the joint committee, that an extensive business had been carried on between the school land office and some organized association outside, a business resulting in great loss to the school fund.

To just what extent the commissioners, Gray and Smith, were connected with this nefarious business is not clear, but it is reasonably certain that it was carried on with their consent. Treasurer Janssen appears to have been less culpable than his colleagues, who never conferred with him. The guilt of Janssen, who because of family misfortunes was absent from Madison for a long time, lay in his not having opposed the other commissioners and in his not having required a bond of Seaver, his deputy, who was a drunkard and a gambler.

Still another loss to the school fund arose from the repeated violation of the laws prohibiting the sale of forfeited lands at less than their original sale price. The case of George Read, of Manitowoc County, affords an instance. In 1854 he forfeited fifty-two lots and later repurchased them at $50 each. Some of these lots had originally cost him $60.

A great fraud was perpetrated on the general public and on the school fund by the many violations of the law of 1855 providing that no person should at any sale of such lands purchase more than 160 acres of school or university lands. This violation was accomplished in many cases by the use of fictitious names, the subsequent forfeiture of bids, and then purchase by application, which was allowable in cases of forfeited lands. The law was also openly violated. Another way of circumventing the law was by offering the forfeited lands at auction so early the next morning that bona-fide purchasers had no opportunity to bid.

In 1854, Seaver, who was then in charge of the treasury, as Janssen was absent from his duties, went to Milwaukee and had an interview with James Ludington, as a result of which interview Ludington made application for 57,000 acres of school lands. Testimony offered before the investigating committee tended to show that Seaver had received as a present from Ludington $2,000 worth of stock in the Bank of the West. The amount payable on Ludington's certificates was $13,845.05, which both he and his agent, George W. Chapman, swore was paid in full to the Treasurer or his deputy. The books of the Treasurer, however, accounted for only $10,189.70. N. W. Dean swore that on May 15, 1854, he paid to Seaver, the deputy treasurer, $780.10 on 1,588.69 acres of university lands. Not a dollar of this payment was credited to the university fund. Upon fifty-six patents issued for lands marked in the school land office "paid in full" the treasurer's books showed unpaid $5,900.61.

The losses through defective mortgages taken to secure loans from the funds were indeed very great. The defective and irregular mortgages numbered 119 and represented $41,896.50. The law required that the attorney-general should examine all mortgages, title papers, etc., relating to loans and should certify to the correctness of the same before the loan should be made. Some loans were made without regard to this provision and consequently some of the securities held were doubtful or even worthless. Some mortgages certified to by the attorney-general were so defective that they could not be foreclosed. In some cases no amount was stated in the note accompanying the mortgage; in other cases no amount was named in the mortgage. Some mortgages bore no seal; some were not dated. Many were left unrecorded, thus giving the mortgagor time and opportunity to alienate the mortgaged property. In one case at least this was actually done. The loan in this case was to John Nelson of Outagamie County. In some cases no mortgage was taken; in others, the same land was mortgaged to secure two loans. Many loans were of more than $500, which was contrary to law. The funds were managed with utter disregard for the law and for their safety and inviolability.

This disregard is particularly well illustrated by a transac-

tion that took place on the thirtieth of April, 1855, on which day Henry Quarles purchased from the state several parcels of land that had been mortgaged to the state and later forfeited. A patent to the land was issued to Quarles, who then executed a note for $825, the purchase price, and gave a mortgage to the state on only a part of the land, thus obtaining a clear title to a part of the lands and paying for it with the other part. Even if the intentions of Quarles had been good, what right had the commissioners to accept a mortgage on land that was obviously not worth the amount stated in the mortgage?

The losses to the funds arising from under-appraisement and haste in bringing the lands into the market will be treated in the chapter on Public Lands.

The Investigating Committee,* the results of whose thorough work have been set forth in the preceding pages, was of the opinion that under judicious, careful, and prudent management the school fund in 1856 would have been double what it was. Tens of thousands of dollars of this fund had been embezzled and hundreds of thousands lost or squandered. "Criminal negligence, wanton recklessness, and utter disregard for the most responsible duties which could be imposed upon man alone" had characterized the management of the funds.[5]

Undoubtedly, the legislature was responsible in some measure for this mismanagement and fraud, since it had not provided a department for the management of the education lands and their funds. In 1856, Governor Barstow, as had also previous governors, urged the erection of a permanent department under the control and supervision of the school land commissioners, a department for the management of the school and university funds. He declared that the other duties of the commissioners precluded their giving the time necessary to the management of these funds. In view of the disclosures made by the joint select committee, it is amusing that Barstow on the eve of the investigation declared that, notwithstanding the

* The members of the Committee were D. Taylor, P. H. Smith, and D. Worthington of the senate; William Hull, A. Grenlich, H. H. Gray, John F. Potter, and Charles Burchard of the assembly.

[5] *Report of Joint Select Committee*, 1856, in *Wisconsin Miscellaneous Pamphlets*, XXVIII.

neglect of the legislature to make adequate provision for the care of the funds, there was no evidence in all the official reports having to do with these funds that one dollar had ever been lost or squandered. The Governor made this declaration notwithstanding that in 1855 gross errors had appeared in the report of the commissioners. Apropos of the investment of the funds, this Governor, whom public opinion proclaimed the chieftain of the "Forty Thieves," declared to be idle the fear that the funds would be endangered by being loaned to the political and personal friends of the officers in charge of them, but he admitted that they were so loaned and asserted that it was inevitable that they should be.[6]

As has already been shown the funds were in this period of great fraud loaned exclusively to individuals. In 1856 a new avenue for the investment of the funds was opened up. Every union school, academy, college or university, or other school of learning was given permission to borrow from the trust funds a sum not less than $5,000 nor more than $10,000, on the credit of the town or city in which such institution might be located. The granting of such a loan was contingent upon the consent of the electors of the town or city, given at a general election. Such loans were not to exceed twenty-five per cent of the assessed value of the property in the town or city. Interest at the rate of seven per cent was to be added to the taxes of the town or city and returned as a part of the state tax.[7] When this law was repealed the next year, the *Milwaukee Sentinel* said that applications were on file from at least one institution that had no existence except in its charter and no location except on paper. The *Sentinel* declared that the repealing law loosened a "new grip" on the school fund.[8]

In 1858, the commissioners were authorized to require payment at any time after January 1, 1859, of all loans from the school or university funds or any other state fund, provided, however, that payment should not be required until one year after the original credit had expired, and provided further that

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[6] *Governor's Message*, 1856, 8.
[7] *Laws of 1856*, ch. 143; *Laws of 1857*; ch. 2.
[8] *Milwaukee Sentinel*, Feb. 4, 1857.

the original credit might be extended from year to year at the discretion of the commissioners. In cases in which there appeared to be a defect in the title to the land pledged to secure a loan, the commissioners were to demand payment when due, and if their demand was not complied with they were either to close the account as provided for by law or to exact new and sufficient security. When property sold to satisfy a debt to the funds did not yield a sum sufficient to pay the principal, interest, and costs, the commissioners were to take proper steps to collect the balance from the individual personally responsible for the payment of the debt.[9]

Political strife and slander led in 1858 to another systematic investigation of the executive departments. The papers in the school and university land office were found in better order than in former years, and the securities were more uniformly in compliance with law. Defects, however, were discovered on the face of the papers and also errors that might vitiate the securities. The most serious loss ascertainable was, however, from insufficient securities. Loans had been made on village lots of little intrinsic value, on appraisals obtained from interested persons, or on valuations based on speculative prices, not obtainable in times of ordinary business prosperity. Of the lands forfeited for non-payment of interest on loans and sold in the fall of 1857, fourteen pieces, mortgaged for $6,000, had been bid in by the state, as no one else was willing to pay for them the amounts due thereon. Many if not all of these parcels were in the opinion of the investigating committee either comparatively worthless or in the hands of people having prior liens on them. It was pointed out that the fees collected by the land office instead of being turned into the treasury were appropriated by the commissioners. The expenses of the office in that year reached the considerable sum of $22,758, and $13,351 was paid for appraising lands. Evidently the economy sought after in placing the management of the education lands and funds under the management of the secretary of state, treasurer, and attorney-general was not being realized. The charges on sales

[9] *General Laws of 1858*, ch. 130.

and conveyances could be justified only on the ground that they were intended to defray the cost of appraising the land and of conducting the land office; they were going into the pockets of the commissioners.[10]

In 1860 the papers relating to loans were found to be for the most part in good order; defects, however, were found in several papers. In some cases there were no notes or mortgages to secure loans. It is possible, of course, that these missing mortgages were in the hands of registers of deeds to be recorded. If they were, however, some record should have been made of them. The attention of the investigating committee was called repeatedly to papers alleged to have been forged, but time did not permit the investigation of such cases. The committee was of the opinion that more vigilance than had up to that time been exercised in the disposing of the funds was necessary to their preservation. Of the $56,374 of securities forfeited to the state in 1859, a large proportion were worthless.[11] The condition was much improved in 1861, but was still far from satisfactory. The papers relating to loans were correct in every particular; the commissioners had used the greatest caution in examining securities offered for loans, but in some cases through the fault of the appraisers the security was insufficient. In some cases the appraisement of property securing loans from the funds was double the actual value.[12]

There is not a shadow of doubt that the system of lending the trust funds to individuals had worked great loss to the funds, yet legislature after legislature, notwithstanding the repeated recommendations of the land commissioners that the funds be invested in public securities, allowed the system to continue. In 1862, Governor Harvey observed that the management of the funds and of the lands held in trust on their account was constantly producing a decrease of the capital of the funds and was accumulating a corresponding amount of unproductive assets having fictitious values. The accounts of the funds showed much unproductive capital in the form of un-

[10] Appendix *Senate Journal*, 1858.
[11] Ibid., 1860, Document A.
[12] Appendix, *Senate Journal*, 1861.

sold and forfeited lands, entered at the legal price. In 1863, Governor Salomon also called the attention of the legislature to the fact that the productiveness of the funds was being decreased continually because of forfeitures of land. Governor Harvey declared that the practice of selling state lands on credit with a small cash payment had proved a cheat and a delusion. He urged that the practice be discontinued, except perhaps in the sale of actual farm lands in limited quantities and in good faith for immediate settlement and improvement. It was recommended that the then present system of loaning the funds be replaced by one involving less risk, less expense and promising greater safety. The land commissioners justly complained that the law compelled them to scatter large funds in small loans, in the majority of cases, to men of whose character and responsibility they knew nothing, and upon securities of the value of which they were entirely ignorant, except in so far as they were informed by appraisers of whose judgment and integrity they knew nothing. It was wisely recommended that the funds be invested in the bonds of Wisconsin or of the United States. Such a plan of investment was rightly declared to be economical, convenient, and safe. This plan has the further merit of being devoid of that pernicious element of political influence incident to the loaning of large sums of public money to the people, with its attendant temptations to favoritism and abuse for personal or partisan reasons.[13]

The Civil War opened up a new source of investment for the funds. The legislature in 1862 directed the commissioners to invest the principal of the school fund then in the treasury, with the exception of $3,000, in the state war bonds remaining unsold, in preference to all other loans and investments. These bonds bore interest at seven per cent. In 1864 the commissioners were directed to invest, in preference to all other loans and investments, the principals of the school, university, swamp, land, and drainage funds in the bonds of the state, paying seven per cent interest.[14] The Wisconsin State bonds purchased by the trust funds ranged in price from ninety-three

[13] *Governor's Message*, 1862, 6-8; Ibid., 1863, 5.
[14] *General Laws of 1862*, ch. 89; Ibid., 1864, ch. 217.

cents to par.[15] In speaking of the wisdom of the investment of the trust funds in the bonds issued by the State for war purposes, the Secretary of State in 1866 said, "The State by virtue of several laws . . . . very wisely provided for the investment of the trust funds in the bonds issued by the state for war purposes. This not only draws the bonds from the market, enhances the value of those still outstanding and relieves the people from the burden of taxation which would be felt were the principal to be paid at maturity, but it is the most safe and most economical method of providing for the safe-keeping of these sacred funds, and the prompt payment of the interest when required for distribution among the people in support of the common schools, normal schools and the State university. So long as the bonds of the State can be purchased with the surplus of these funds, it is to be hoped that no other source of investment will be sought. It is fortunate that the necessities of the state have forced the abandonment of the former pernicious system of numberless loans in small amounts, and on most uncertain security."[16]

In the above is the rather absurd suggestion that a state debt is desirable provided that it is a debt to the trust funds. Governor Fairchild, taking up this suggestion, recommended that the state debt to these funds be made perpetual.[17] The Governor argued that the tax for interest payments would be merely a tax for education, but why have such a tax unless it is necessary, unless the people of Wisconsin cannot afford to pay off their war debt?

As many individuals indebted to the trust funds were unable to pay, Governor Fairchild recommended that adjustments be made with these people, who had forfeited property mortgaged to the funds and were seeking relief from payment of the balances due.[18] Acting upon this recommendation, the legislature

[15] *Secretary of State's Report*, 1866, 4.
In 1867 it was provided that a part of the university and agricultural college funds might be invested in the Dane County bonds issued to aid the university enlargement. *Laws of 1867*, ch. 46.
[16] *Secretary of State's Report*, 1866, 4.
[17] *Governor's Message*, 1866, 16.
[18] *Governor's Message*, 1866, 19.

enacted a law which provided that the land commissioners might in conjunction with the governor and the superintendent of public instruction, if they thought that such action would conduce to the best interests of the state, compromise with such persons. Another law of the same year authorized the commissioners to sue for the amount due in any case in which there appeared to be any prospect of collecting on a judgment.[19]

As the time was drawing near when the bonds of the state would be all bought up by the trust funds, the Secretary of State in 1868 was of the opinion that it was necesary to find some new way of investing the annual additions to the funds. The statutes of 1849 provided for loans to individuals; a law of 1868 allowed the investment of the funds in the bonds of the United States, of the New England States, of New York, and of Ohio.[20] Experience, dearly bought, had condemned the system of loans to individuals as wasteful and as "an instrument of political persuasion if not of political corruption." The bonds of states other than Wisconsin paid not more than six per cent interest, and it was thought that soon, through refunding, the interest on United States bonds would be reduced to four or four and one-half per cent; while money was in demand in Wisconsin at from seven per cent to ten per cent. It was argued by Secretary of State Allen that the people of Wisconsin had no money to loan to the citizens of other states, that all the capital arising from the sale of state lands could find ample use at home. Accordingly, he advocated that the state borrow the income of the trust funds; and as the constitution forbade a state debt in excess of $100,000, he proposed that it be so amended as to permit the carrying out of his plan, by which, through reduced taxation, the trust funds would be loaned to the people of the state. It was urged that this plan would secure to the funds a safe and permanent investment, a high rate of interest, seven per cent, and economy of management. It would keep the capital of Wisconsin at home, and relieve the people of taxation. A similar plan had been in practice in

[19] *Laws of 1866*, ch. 23, Sec. 1; ch. 109.
[20] Ibid., 1868, ch. 111.

Ohio for some time.[21] Nothing came of this proposal. It occurs to the writer that perhaps the carrying out of this plan would have resulted in an extravagant state administration.

In passing, it should be noted that in 1862 the regents of the University were authorized to apply a sufficient part of the university fund to the extinguishment of building debts. The debt of the University to the fund for money loaned for the erection of the main building was canceled and the regents were excused from maintaining a sinking fund for the payment of legal indebtedness for the erection of University buildings.[22] There is no little question as to the validity of this law, as the university land grant was for the *support* of a university.*

In 1869, the legislature inaugurated the system of authorizing specific loans to specific towns and school districts. In that year a loan of $15,000 was authorized to school district number three in the town of Lancaster, Grant county. The rate of interest was to be agreed upon between the school district and the land commissioners, but was not to exceed ten per cent. The debt was to run for fifteen years and an annual tax for the payment of interest and to provide a sinking fund was to be levied. In 1871 the first loan of this kind at seven per cent was authorized, to the town of Onalaska, in La Crosse County.[23]

Governor Fairchild in 1870 spoke very highly of this system and recommended its extension. He pointed out that the bonds of the states were being redeemed constantly and consequently did not always constitute a stable investment. The granting of loans to towns and cities, under special acts, for the erection of school buildings had brought no losses to the fund, and could not, so long as the state reserved the right to levy a tax each year for the payment of the interest. Under such a system of loaning the funds, the people could enjoy the advantages of

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[21] *Secretary of State's Report*, 1868, 26-31.

[22] *Laws of 1862*, ch. 268.

* In 1872 Governor Washburn attacked as unconstitutional the use of the university fund for buildings, and maintained that the most valuable lands had been sold at a very low price in order that means for the erection of buildings might be obtained. He estimated that if the lands in question had been held until 1872 they would have brought ten-fold the amounts for which they were sold.—*Governor's Message*, 1872, 17-18.

[23] *Private and Local Laws*, 1869, ch. 143.

using them for educational purposes, and the funds were not exposed to the losses incident to the system of loans to individuals.[24] In 1871 the legislature enacted the general law recommended by the governor. By this law the commissioners were authorized to make loans to school districts for the erection of school buildings, in sums not exceeding $10,000. The time of such loans was to be ten years and the rate of interest seven per cent. The money loaned together with all the other indebtedness of the district was not to exceed five per cent of the assessed value of the real property in the district. The loans were to be repayable in equal semi-annual installments with interest in advance. The commissioners were to make no such loan unless the application for it had been authorized by a majority vote of the district, and not until the district had voted a tax for the erection of the building equal to at least half of the amount of the loan asked for. An amendment of 1889 abolished this tax requirement. It was unlawful to rescind, modify or in any way interfere with the assessment and collection of this tax. It was provided that the district should levy annually a tax sufficient to pay the interest and amount of principal falling due each year. All taxable property within the district stood charged with the loan, and changes of boundaries were not allowable until the loan had been repaid in full. In 1877 it was provided that boundaries might be changed with the consent of the commissioners, but not in such a way as to release any security for the loan. In case any officer neglected or refused to do his duty in relation to the tax for the payment of the loan, it become the duty of the Attorney-General to bring mandamus proceedings in the Supreme Court to compel him to do his duty. Thus were the education funds very carefully protected.[25] Various changes have been made in this law. In 1899 the time limit was extended to fifteen years, and loans were authorized for the refunding of indebtedness as well as for the erection of school buildings, and the interest rate was lowered tc three and one-half per cent. The interest rate had been made six per cent in 1887. It was provided also that payments should

[24] *Governor's Message*, 1870, 6.
[25] *Laws of 1871*, ch. 42; *Laws of 1889*, ch. 393.

be made in annual installments beginning at a time to be fixed by the commissioners. In 1898 it was provided that loans might be made to the school directors of towns in which the township system of government obtained. In 1901 the limit of loans was raised to $25,000.[26]

The latitude allowed the commissioners in the matter of the investment of the funds was extended in 1883 when it was provided that investments might be made in the bonds of Michigan, Illinois, Iowa, and also the bonds of cities, towns and counties issued since the adoption of the amendment of Section 3, Article II of the constitution providing that the aggregate indebtedness of a city, town, or county shall not be in excess of five per cent of the taxable value of the property therein. The revised statutes of 1898 added the bonds of villages.[27]

Numerous special laws providing for specific loans were enacted. In 1874 a loan of not to exceed $200,000 to Iowa county was authorized. The interest rate was seven per cent, and at least one-tenth of the principal was to be paid each year. Annually in apportioning the state tax among the counties, the Secretary of State was to add to the Iowa county tax a sum equal to the interest at seven per cent and one-tenth of the principal. While under debt to the state, the county was prohibited from becoming indebted to an amount greater than five per cent of the average taxable value of the property in the county as shown by the last two assessment rolls. In 1875 a similar loan under similar conditions was made to the city and town of Mineral Point.[28] In 1876 there was a loan of $20,000 to the county of Racine. One-half of the principal was to become due in two years; the other half in three years. The same year there was authorized a loan of $100,000 to Wood county on the same terms as to Iowa county, except that the first payment on the principal might be made in two years. Still other loans were authorized.[29] In 1878 the legislature authorized a loan of not to exceed $20,000 to the City of Burnett, for the

[26] *Laws of 1887*, ch. 541; *Laws of 1899*, ch. 129; *Laws of 1901*, ch. 123; *Revised Statues*, 1898, Sec. 258, Subd. 2.

[27] *Laws of 1883*, ch. 83; *Revised Statutes*, 1898, Sec. 258, Subd. 4.

[28] *Laws of 1874*, ch. 186; *Laws of 1875*, ch. 128.

[29] *Laws of 1876*, chs. 144, 107, 197; *Laws of 1877*, ch. 37; *Laws of 1880*, ch. 4.

purpose of constructing a narrow gauge railway. Before the loan was made, the route was to be surveyed, located, and established, and a majority of the legal voters were to declare in favor of the loan and to determine the amount thereof.[30] In the case of all these loans certificates of indebtedness made payable to the commissioners were to be deposited with the state. In many cases the annual payments of the principal were not to begin until after two, three, five, or six years.

In several instances, towns were allowed to convert bonds issued in aid of railway companies into certificates of indebtedness to the trust funds. For example, in 1879 the town of Little Wolf in Waupaca county was authorized to become indebted to the trust funds to an extent not exceeding $5,000. The ten $500 certificates of indebtedness made payable to the commissioners of public lands were to have no force or effect until the latter had retired, at fifty per cent of their face value, the bonds issued by the town to aid the Green Bay and Pepin Railroad Company. A like arrangement with the town of Waupaca provided for the retirement of its railroad bonds at seventy-five per cent of their face value. In the same year the town of St. Lawrence in Waupaca county was authorized to transfer its bonded indebtedness into certificates payable to the trust funds. The commissioners of public lands were directed to purchase the outstanding bonds of the town at the lowest price at which they might be purchased. The whole amount paid for them was not, however, to be in excess of the constitutional debt limitation of five per cent. The certificates of indebtedness in this case were to bear interest at seven per cent and the payment of the principal was to be made in ten equal annual installments. The same arrangement was entered into with the town of Plover in Portage county. In 1880, a loan of $30,000 for eighteen years to the town of Arcadia was authorized. This loan also was for the retiring of bonds. The price paid for the bonds was to be agreed upon between the owners of them and the town supervisors. Other loans were $100,000 to the county of Portage and $55,000 to Lincoln

[30] *Laws of 1878*, ch. 155.

county. The Lincoln bonds, issued in aid of the Wisconsin Valley Railroad Company were to be redeemed at par. There was also a loan of $50,000 to Brown county.[31]

In some cases of loans from the trust funds, the law required the vote of the electors of the administrative unit asking for the loan; in others the commissioners were allowed to exercise their discretion in this regard; in some cases the law allowed the county board of supervisors or the common council of a city or village to borrow.

The law authorizing loans to individuals continued to occupy a place in the statutes, but in 1878 it was altered as follows. Loans to individuals were to be in sums of not less than $500 nor more than $2,000. It was provided that property mortgaged to secure such a loan should be worth at least three times the amount of the loan, and this value was to be exclusive of buildings and all perishable improvements. As in the statute of 1849, the maximum period of such loans was five years, but extensions might be granted by the commissioners.[32] The statutes of 1878 provide also that if any part of the Agricultural College Fund is lost in any way, the Secretary of State shall add to the next tax to be levied thereafter a sum sufficient to make good such loss.[33]

In 1880 it was complained that the uninvested parts of the trust funds were unnecessarily large. On September thirtieth of that year there was on hand in the various funds $104,609.93. Governor Smith in defense of the commissioners said that they were obliged in handling the funds to comply not only with the written law but also with a predominating public sentiment, which, given expression in many acts of successive legislatures, undoubtedly favored the policy of loaning the funds to school districts, towns, villages, cities, and counties, but such a policy, except in the case of school districts, required for its carrying out the enactment of special laws. The Governor very wisely recommended the passage of a general act authorizing such a policy, which act, he said would effect four good ends; the time

[31] *Laws of 1879*, chs. 34, 198, 185, 161; *Laws of 1880*, chs. 34, 85, 136.
[32] *Revised Statutes*, 1878, ch. 17, Sec. 265.
[33] Ibid., ch. 17, Sec. 249.

of the legislature would not be taken up with the enacting of innumerable special laws authorizing loans, much needed uniformity in the manner of making loans and collecting payments of principal and interest would be secured, the loans could be made when needed, and the necessity of retaining large balances in the treasury would disappear.[34] In the opinion of the writer the last was by no means an assured result, nor is he certain that the Governor exonerated from all blame the commissioners for having had uninvested over $100,000 of the trust funds.

The law asked for by the Governor was enacted. It provided that upon certain conditions, the commissioners of public lands might make loans from the funds to towns, villages, cities, and counties in the state. In no case was a loan to run for longer than twenty years. The loan might be made in installments such that together with the other indebtedness of the town, city, or village it would not amount to more than five per cent of the average assessed value of the property in such town, city, or village for the three years next preceding the application for the loan. In 1891 it was provided that the loan might be used to pay off existing indebtedness and might be paid over to the town or city in installments as fast as the old indebtedness was cancelled.[35] The interest rate on such loans was to be the minimum legal rate obtaining at the time when the loan was made. In 1889 it was provided that the rate should not be less than five per cent; in 1891, not less than four per cent; in 1893 a uniform rate of four per cent for loans to school districts was established; in 1899 it was provided that the rate on loans should not be less than three and one-half per cent.[36] No loan can be made to a town unless the application for it has been authorized by the town supervisors, nor to any village unless authorized by a vote of not less than three-fourths of the trustees, nor to any county unless authorized by two-thirds of all the members of its board of supervisors. Certificates of indebtedness are to

[34] *Governor's Message*, 1881, 6.
[35] *Laws of 1891*, ch. 143.
[36] *Laws of 1889*, ch. 279; *Laws of 1891*, ch. 143; *Laws of 1893*, ch. 187; *Laws of 1899*, ch. 130.

be delivered to the Secretary of State. The taxable property of a public corporation securing a loan stands charged with the amount thereof and pending the payment of the debt no alterations in boundary are allowable such as would cut off from the town or other political unit any land. A tax is to be levied sufficient to pay the annual interest and installment of the principal, and the same are to be paid to the state out of the first moneys received for taxes. The use of a loan for any other purpose than that for which it was negotiated is forbidden, and any officer who becomes a party to a misapplication of a loan is liable to imprisonment for not more than five years, with hard labor, or to a fine not exceeding $1,000, or both. The commissioners may extend the time of loans, but in no case beyond twenty years nor in any case in which the payments of interest have not been kept up. In cases in which the county board of supervisors, common council, or board of trustees is not specially authorized by law to secure loans and make appropriations for the purpose for which the loan is wanted, the application for a loan from the trust funds must be authorized by a majority of the electors. The law of 1881 repealed all laws authorizing loans to individuals.[37]

Loans authorized by special legislative acts continued to be made. It will suffice to notice only one or two of these. In 1885 the commissioners were authorized to make a loan of $30,000 for thirty years at four per cent to the Light Horse Squadron of Milwaukee to enable that organization to erect an armory. The interest on the loan was to be paid annually, and after five years from the time of making the loan the principal was to be paid in annual installments of not less than $1,000. The bonds issued for the loan were secured by a mortgage on the real estate of the squadron. Until the loan should be repaid in full the state was to have free use of the armory for purposes of military defense in case of war, insurrection, rebellion, riot or invasion, or of resistance to the execution of the laws of the state or of the United States, and also for the storage of arms and ammunition. Other similar loans have been made.

[37] *Laws of 1881*, ch. 167.

On the loan to the Eau Claire Light Guard Army Corps in 1893 money was lost, and on this account in 1903 the Normal School Fund was reinbursed from the general fund to the extent of $1,000.[38]

The commissioners continued to have difficulty in investing all of the funds. In 1889 nearly $400,000 remained uninvested.[39] In his message in 1891, Governor Peck dwelt upon the matter of the investment of the funds. At that time the funds were loanable in State of Wisconsin bonds of which there were none, in the bonds of the United States and of certain specified states, of which bonds few were available, in certificates of indebtedness of school districts or municipalities in the state, which local bodies did not want as much as the commissioners had to lend. The Governor made no recommendations, but expressed the opinion that there might be securities other than those in which at that time the funds could be invested, other securities that would absorb all of the funds and also yield a higher rate of interest than the funds were then receiving.[40] The act of 1893 followed authorizing the investment of the funds in the bonds of boards of education, duly incorporated as such, of cities and counties. Another Act, of 1899, authorized investment in the interest bearing securities of towns, villages, cities or counties in the state. However, a price above what will net three and one-half per cent is not to be paid for such securities.[41] In 1903, the Governor declared that the trust funds were fully and profitably invested and that in 1901 and 1902 no transfer had been made from these funds to the general fund.[42]

The following figures show the condition of the funds at the end of the fiscal year, also the receipts of the School Fund in

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[38] *Laws of 1885*, ch. 210; *Laws of 1893*, ch. 177; *Laws of 1893*, ch. 89.
Other special laws authorizing loans are:
Laws of 1883, chs. 77, 143, 153; *Laws of 1887*, ch. 410; *Laws of 1889*, chs. 169, 314; *Laws of 1891*, chs. 113, 231, 381; *Laws of 1893*, ch. 222; *Laws of 1897*, chs. 10, 21; *Laws of 1899*, chs. 241; *Laws of 1901*, ch. 45.
In 1899 a loan of not to exceed $75,000 from the Agricultural College Fund to the Regents of the State University was authorized; also a loan of not to exceed $60,000 to the Regents of the Normal Schools.—*Laws of 1899*, ch. 170.

[39] *Governor's Message*, 1889, 4.

[40] Ibid., 1891, 11.

[41] *Laws of 1893*, ch. 176; *Laws of 1899*, ch. 130, Sec. 2.

[42] *Governor's Message*, 1903, 1.

that year, which receipts are given in order to show the large proportion from taxation.

THE SCHOOL FUND INCOME.

Receipts, 1904.

From interest on certificates of indebtedness	$ 109,454 00
From interest on loans and deposits	70,433 33
From taxes	1,229,332 50
The School Fund, 1904.	
School lands remaining unsold (acres)	25,148.27
Productive Fund:	
In loans to the state	$1,563,700 00
In loans to towns, villages, cities and counties in the state	2,029,178 01
Balance on hand	16,334 95
Total	$3,609,212 96
The University Fund, 1904:	
Lands unsold (acres)	324 96
Balances due on land sold	$2,057 00
Productive Fund:*	
In loans to the state	$111,000 00
In loans to individuals	350 00
In loans to towns, cities and villages	106,270 00
Total	$219,620 00
The Agricultural College Fund, 1904:	
Lands unsold (acres)	120.00
Productive Fund:	
In loans to the state	$60,600 00
In loans to counties, etc., and in balances	232,707 00
Total	$293,307 00
The Normal School Fund, 1904.	
Lands unsold (acres)	1,376.53
Productive Fund:	
In loans to the state	$ 515,700 00
In loans to individuals	1,650 00
In loans to towns, etc.	1,424,288 86
Total	$1,941,638 86 [46]

Sufficient has been said of the losses to the funds through their faulty and dishonest administration. An interesting commentary on the losses through this source is the law of 1905 can-

* The original endowment for the University was munificent and sufficient for the proper support of the institution. Its property has, however, been lavishly and imprudently disposed of and its revenues depleted. Such was the opinion voiced by Governor Taylor in 1875.—*Governor's Message*, 1875.

[46] *Secretary of State's Report*, 1903-04.

1903—Principal of school fund	$3,723,955 12
University fund	232,521 50
Agricultural fund	303,399 61
Normal school fund	1,955,003 86

celing mortgages on real estate executed to the state or territory of Wisconsin, upon which the records of the state treasurer and secretary of state show no payments since January 1, 1865.[44] Other losses arose through the sale of lands at prices that were too low, and through the failure of county treasurers to pay into the school fund all penal fines. This failure has obtained since the beginning of the Government. In 1882, the Governor observed that for twenty years back the treasurers of many of the larger and more populous counties had failed to pay penal fines into the school fund. In 1881 the Attorney-General brought suit in the Supreme Court of the state to compel treasurers to comply with the law in this regard. The court in a unanimous decision sustained the law. This decision effected the payment of most of the fines collected in 1880. The amount paid in that year was $11,583, being more than had been paid in the ten years preceding. It was estimated that there was due from the counties $100,000.[45] The amounts paid in by some of the counties are ridiculously low. For example in 1903, Dane county, having a population of 70,000, paid in $1,383, while Milwaukee county, having a population of 350,000, paid in $9.80. In 1904, Dane county paid in $2,431; Milwaukee county, only $35.77.[46] Mention has been made of the sale of land at prices below its value. Lands worth $15 and $25 have been sold for $1.25 or $2.00. A comparison of what Cornell University received for its Wisconsin lands with what the state of Wisconsin received for its lands is instructive. Cornell had 960,000 acres in northern Wisconsin, a large part of which was sold at sixty cents before the trustees of the university came to a realization of the value of the land. For the remainder of the tract, however, Cornell received more than $8,000,000. The land grants for public schools alone to the state of Wisconsin aggregated nearly 1,500,000 acres.[47] In 1905 all but 25,000

[44] *Laws of 1905*, ch. 331.
[45] *Governor's Message*, 1882, 13.
[46] Ibid, 1905, 85.
[47] *Governor's Message*, 1905, 84.
The United States Land Office gives the number of acres as 958,649; *State Grants of Public Lands-Tables; General Land Office, March 12, 1896.* (a pamphlet).

acres had been sold, but the total in the school fund from all sources was only $3,600,000. Governor LaFollette declared that not more than $2,000,000 had come from the sale of public lands, but that is certainly too low an estimate. The history of the sale and management of the state lands is taken up in the next chapter.

CHAPTER V

THE SALE AND MANAGEMENT OF THE STATE LANDS

By an Act approved September 4, 1841, entitled "An Act to appropriate the proceeds of sales of public lands and to grant preemption rights," Congress gave to certain states then in the Union and agreed to give to states thereafter coming into the Union each 500,000 acres of public land, the proceeds from which were to be used for internal improvements.[1] Wisconsin with the consent of Congress decided to devote its 500,000 to public schools. The Wisconsin Enabling Act, approved August 6, 1846 granted to the new state of Wisconsin for the support of schools the sixteenth section in every township, also ten sections of land for the purpose of completing or erecting state buildings, and all salt springs within the state not exceeding twelve in number along with six sections of land contiguous. In 1852 instead of the salt springs seventy-two sections of land were granted by Congress.* By an act approved July 2, 1862, Wisconsin was granted 240,000 acres for an agricultural college. The Wisconsin Enabling Act granted and conveyed to the future state to be appropriated solely to the use and support of a university the seventy-two sections of land set apart and re-

[1] *Land Laws of United States*, 1882, 260-261.

* *Secretary of State's Report*, 1877, 55.

Wisconsin has been granted the following number of acres for each of the following purposes:

For schools	958,649 acres
For a university	92.160 acres
For an agricultural school	240,000 acres
For public buildings	6,400 acres
Total	1,297,209 acres

State Grants of Public Lands-Tables; General Land Office. (United States) March 12, 1896, (a pamphlet).

served for the use and support of a university by an Act of Congress approved June 12, 1838, entitled "An Act concerning a seminary of learning in the Territory of Wisconsin." By an Act of Congress approved September 28, 1850 entitled, "An Act to enable the state of Arkansas and other states to reclaim swamp lands within their limits," Wisconsin came into possession of all the swamp lands within its borders. The proceeds of the sale of such lands Congress stipulated should be used in reclaiming the same. There have been numerous grants for specific works of improvement, such as canals and railroads.

The constitution of the state provides that the Secretary of State, the Treasurer, and the Attorney-General shall constitute a board of commissioners for the sale of school and university lands and for the investment of the funds arising therefrom. Further general provision is made for the sale of the lands in the following sections. "Provision shall be made by law for the sale of all school and university lands, after they have been appraised; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of sale, the commissioners shall take security by mortgage upon the land sold for the sum remaining unpaid, with interest at seven per cent thereon, payable annually at the office of the Treasurer... ..... The commissioners shall have power to withhold from sale any portion of such lands, when they shall deem it expedient."[2] The significant provisions of these sections are first, some payment down shall be required of purchasers of the state lands, second, the commissioners may withhold land from sale. Unfortunately, these provisions have not always been heeded. There is much significance in the observation of the historian of land grants for education in the Old Northwest, "The whole history of Wisconsin discloses a solicitude on the part of the state to attract immigrants."[3]

The management of Wisconsin's public domain has been marked by inefficiency, carelessness, and fraud. The state has sustained great losses through the premature bringing of land

[2] *Constitution of the State of Wisconsin*, Art. X. Secs. 7, 8.

[3] Knight, G. W. *Land Grants for Education in Northwest Territory*, in *American Historical Association Papers*, I. 106.

into market, through trespassing, through under-appraisement, and through the sale on credit of timber lands which were forfeited to the state after they had been stripped of their wealth; the state, the people of the state, and prospective settlers have suffered great loss and great injustice because of the sale of immense tracts to speculators.

Because of the mass of details connected with the history of the public domain, it is advisable to treat the subject under different heads. The subject of trespassing will be taken up first. Trespassing is defined by the Wisconsin law as "digging or removing minerals, or cutting or removing or in any manner injuring lumber, timber, trees, wood or bark standing or growing." It will never be known how much the state of Wiconsin has lost because its lands were not protected from vandals. It seemed to be the favorite practice with the thieving lumber trespasser to purchase some timber land near a fine tract of timber owned by the state and then to wander from his land over onto the state's domain. No law providing penalties for trespassing was enacted until 1865, although such a law was greatly needed many years before. In 1858 the Governor called the attention of the legislature to the fact that trespassing was continual and that in consequence thereof some lands were losing their value.[4] A law of 1860 provided that trespassers might, if the land upon which they had trespassed was open to private sale, purchase such land by paying the appraised price and a penalty of twenty-five per cent. The penalty was made fifty per cent in 1864 and one hundred per cent in 1871.[5] If the trespasser held a certificate of sale for the land on which he had trespassed, he was to pay the balance due on the land and a penalty of twenty-five per cent of the purchase price; this penalty was

[4] *Governor's Message*, 1858, 27-28.

In 1856, by joint resolution of the legislature, William Cromble was appointed to secure and dispose of wood, timber, and lumber taken from State Lands. Cromble made a tour through the northwestern counties and undoubtedly saved to a considerable extent lands situated there from being stripped of their timber. He estimated the value of his work at $30,000. He gained for the State a small sum by the sale of timber stolen from public lands, and began suits against many persons guilty of trespassing.—*Secretary of State's Report*, 1856, 101.

[5] *Laws of 1864*, ch. 233; *Laws of 1871*, ch. 21, Sec. 5.

made one hundred per cent in 1876.[6] In cases of purchase the commissioners were to deliver up to the trespasser whatever lumber, timber, logs, shingles, or shingle bolts cut from the land had been seized by the clerks of the commissioners. In case the certificate holder was not the trespasser, the latter might regain possession of the property seized by paying the amount due on the land and the expenses of seizure and sale.[7] A law of 1871 provided that if the land trespassed upon had been sold previously it was to be sold only to the certificate holder. The law of 1865 already referred to made it a misdemeanor to injure in any way lands in which the state had an interest, including lands sold by the state on credit and lands mortgaged to the state. Any person who dug any mineral on or removed any mineral from such lands, or cut timber, lumber, trees, wood or bark upon any such lands, or removed any such timber or other material or any buildings, fences, fixtures or other property standing upon or belonging to such land or destroyed or injured the same, except when authorized by law was liable to imprisonment in the county jail for not more than six months and to a fine of not exceeding $1,000. In 1891 $100 was substituted for $1,000.[8] A fee of not exceeding ten per cent of the fines collected was offered as an inducement to county prosecutors to proceed against trespassers. Witnesses and others furnishing information are allowed not to exceed twenty-five per cent of fines. If the property in question does not exceed $100 in value, punishment is by fine of $10 to $100. Persons interfering with clerks appointed to protect the lands and to seize lumber, etc., unlawfully taken were made punishable by not more than one year's imprisonment and a fine of not more than $1,000.[9]

The law provides that when lands are sold on credit a certificate of sale shall be issued to the purchaser, but the title is to remain in the state until the full purchase price and interest have been paid. In 1849 it was provided that no certificate of sale shall confer upon the purchaser the right to cut down, destroy, or carry off the land purchased, any wood or timber thereon

[6] *Laws of 1876*, ch. 314, Sec. 5.
[7] *Laws of 1860*, ch. 233.
[8] *Laws of 1891*, ch. 64.
[9] *Laws of 1865*, ch. 377, Secs. 1, 3, 4, 6.

or any mineral therefrom, without the written consent of the commissioners; furthermore, in case of forfeiture the purchaser was made liable to suit for the amount of waste or injury that he had done to the land forfeited.[10] These provisions and penalties did not, however, protect the state against loss. A select committee of the legislature in 1854 discovered that 10,000 acres of pine lands valuable only for their timber were sold in 1853 on thirty years credit and with no payment down. It was customary to cut the timber from such lands and then forfeit them to the state. The committee very properly censured the land commissioners and declared such infamous transactions dangerous to the interests of the state.[11]

Notwithstanding the penal law of 1865, in 1866 the Governor complained that in spite of efforts to prevent it the stealing of lumber from state lands continued to be a great evil.[12] In 1876 Governor Ludington declared that a system obtained by which great depredations were committed on state lands and that the state secured but scant redress by the collection of "stumpage" from the trespassers. The sums collected were much less than the value of the timber taken. It was said to be a profitable business to strip public lands of their timber and then effect a settlement with the state.[13]

The first Governor of the State, Nelson Dewey, in his first message, recommended the sale of the school and university lands as soon as they could be appraised. He believed that the interest on the money received would exceed the rise in the value of the lands that would accrue to the state if sale should be postponed. Besides, if the lands were sold a large quantity would pass into the hands of industrious settlers and hence the productive resources of the state would be increased greatly, the amount of taxable property would be increased, and the revenues of the state would grow. Such reasoning with respect to the settler seems sound, but it left out of account the speculator and a board of land commissioners too often ready and

[10] *Revised Statutes 1849*, ch. 24, Sec. 17, 18, 21.
[11] *Report of Select Committee to Investigate the Land Office*, Appendix in *Senate Journal*, 1855.
[12] *Governor's Message*, 1866, 19.
[13] Ibid. 1876, 13.

willing to help him put the public lands out of the easy reach of the industrious settler. In fact, in this same message of 1849, Governor Dewey complained that the practice of disposing of the public domain in unlimited quantities was becoming a crying evil. In many parts of the state, settlement was being greatly retarded because immense tracts of the best lands were being held by speculators. Settlers were obliged to pay advanced prices for their homes, and then by their labor they enhanced the value of neighboring land held by non-residents. In one county a single individual, who was not even a resident of the United States, held upwards of 20,000 acres.[14] It was reported in 1854 that in the northern counties most of the school lands were entered by persons in the East and in many cases in 30,000 and 40,000 acre tracts.[15] Advertisements of large tracts of school lands were common. In 1858 James P. Falkner advertised for sale 50,000 acres of choice school lands in eastern and western parts of the state.[16] In 1855 Mann, Hammond and Company offered for sale over 100,000 acres of choice school lands in northern and northwestern counties.[17] Such advertisements show that a great deal of state land was bought for speculative purposes. The joint investigating committee of 1855 showed that in 1854 over 200,000 acres had been sold without any payment down and on thirty years credit. To nine persons were sold 129,520 acres. The smallest sale among these nine sales was one of 5,065 acres. There were among these nine sales one of 34,701 acres and one of 28,124 acres.[18]

In 1854 a bill restricting the sale of state lands to actual settlers and in limited quantities passed both Houses, but somewhere between the Senate Chamber and the Governor's office it mysteriously disappeared.[19] This disappearance is sufficient commentary upon the rapacity and unscrupulousness of the land speculators or their agents who hovered about the legisla-

[14] *Governor's Message*, 1849, 20, 21, 27.
[15] *Milwaukee Sentinel*, Feb. 22, 1854.
[16] *Daily Patriot*, Jan. 19, 1858.
[17] *Milwaukee Sentinel*, Mar. 29, 1855.
[18] *Report of Select Committee to Investigate the Land Office*, 5-6, in Appendix, *Senate Journal*, 1855.
[19] *Milwaukee Sentinel*, Mar. 1, 1855.

tive halls of the state. In 1865, a law against purchasing lands for speculative purposes was enacted. This law required that applicants for lands make affidavit personally or through an agent or attorney that they wanted the land applied for for their own use and for actual occupancy or cultivation, or for use in connection with an adjoining farm owned or occupied by the applicant, and further that the land applied for when added to the university or school land held by or being held for the applicant would not exceed 320 acres. In 1856 this law was extended to apply to swamp lands.[20] The attempt of the law of 1855 to prevent any more lands from falling into the hands of speculators and to afford settlers every opportunity to buy from the state was defeated in a large measure by large entries of lands while the bill was pending. Between the first and fifth of March large entries were made by clerks in the land office, in the name of Daniel Howell, who had no interest in the lands and whose name was used without his authorization. Others also made large entries. Even members of the legislature entered large tracts.[21] In this connection it should be explained that lands that had been once offered for sale at auction and forfeited lands that had been re-offered for sale were subject to private entry. The law of 1855 was no more effective than the earlier law of 1849 providing that at a public sale no one person was to be allowed to buy more than 160 acres. Notwithstanding the 320 acre limit, the commissioners continued to sell lands to speculators in tracts of 20,000, 40,000 and 60,000 acres. The fees illegally pocketed by the commissioners stimulated such sales, which increased the evil of land monopoly and injured the funds. The law provided that a fee of one dollar be paid for each tract purchased. The commissioners construed *a tract* as forty acres, so that the purchaser of 320 acres had to pay a fee of four dollars. It was the manifest purpose of the law providing for the fee to provide for the payment of appraising the lands and other costs connected with their sale and not to add to the private incomes of the commissioners.[22]

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[20] *General Laws*, 1855, ch. 21; Ibid. 1856, ch. 125, Sec. 11.
[21] *Report of Select Committee*, 1856, 24.
[22] *Report of Legislative Investigating Committee*, 1858, In Appendix, *Senate*

In 1903 another anti-speculator act was passed. This law provides that whenever at a public sale of state lands, a person makes a bid and then refuses to pay the twenty per cent of the amount of his bid required by law, and to make affidavit that of the public lands sold since October 15, 1903, he owns no more than what with his present purchase amounts to no more than 160 acres, that he has no agreement or understanding and is under no contract, express or implied with any person, co-partnership or corporation for any sale, transfer, or conveyance of said lands, now or at any future time, bona-fide mortgages for raising some part of the purchase price excepted, and that he has not been engaged or instrumental, directly or indirectly, in inducing any person or persons to remain away from or refrain from bidding at the last public sale at which said lands have been or are being offered for sale, such person shall forfeit $25. This penalty is ridiculously low and the mortgage exemption leaves the way open for fraud. The same law of 1903 provides that no more state lands, except swamp lands, lands suitable for agriculture, wood lots convenient to farm homes and isolated tracts of not exceeding 80 acres each, shall be sold.* All public lands remaining unsold and all lands that the state may acquire are to constitute a State Forest Reserve.[23]

There can be no doubt that the state has lost a great deal through undue haste in selling its lands. If the sales had been for the most part to settlers the state might have gained more in the end then it lost through its haste in selling the lands, but, as has been shown, most of the sales were to speculators or to persons who despoiled the land and then forfeited it valueless to the state. There is some question too as to whether the state had a right to use its public lands for the purpose of drawing settlers, since the land grants were made for education and not for the purpose of attracting immigrants. Much of the University land was sold prematurely in order to secure funds for buildings, the erection of which out of the proceeds of the

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Journal, 1858. The members of this Committee were M. M. Davis of the Senate, and B. L. Runals and E. Easton of the Assembly.

* Sales for cash only. *Laws of 1907*, ch. 193.

[23] *Laws of 1903*, ch. 450, Sec. 6, 7, 16, 17.

university land grant was of very questionable validity, as the land grant was for the *support* of a university. The Investigating Committee of 1856 pointed out in commenting upon the undue haste with which the lands were sold, that they were generally situated in new and uninhabited parts of the state and as they were surrounded by United States lands they were rarely appraised at more than $1.25 an acre, the federal price. The committee recommended a change of policy with respect to the sale of lands, pointing out that the educational interests of the state did not demand any material increase in the school fund at that time and also that the fund was then much larger in proportion to the number of children than it would be twenty years in the future, even under the most prudent management. It was recommended that the school and university lands remaining unsold be kept out of the market until other lands near them should have been sold or until further withholding of them would seriously obstruct the settlement of the country.[24] Such a policy would have brought more into the funds; it would have caused the lands to fall into the hands of actual settlers for the most part, instead of into the hands of speculators as did the policy then obtaining, but such a policy would have destroyed the splendid opportunity for graft that the lands afforded. Against the policy of withholding of the lands from sale it was argued that a retention of the lands would retard settlement. The policy employed, however, though intended from the point of view of the law to promote settlement, was under lax and dishonest administration of the law actually operating to retard settlement, by throwing the lands in quantities ranging from 5,000 to 75,000 acres into the hands of speculators.* The system of sale obtaining resulted also in great loss to the funds, since under it many lands were sold below their value. Except in the cases of a few tracts well known for their great comparative value, public sale brought little competitive bidding. Large tracts of land of the same general character as state lands and interspersed among them were sold to actual

[24] *Report of Select Committee*, 1856, 32.

*In 1853, a combination of persons bought 130,000 acres, and in 1854, a single individual bought 60,000 acres.—*Governor's Message*, 1855, 10.

settlers by railroads and other corporations at vastly superior prices. The advantage of the private corporations over the state in this regard was believed to lie in their practice of showing their lands and of selling to actual settlers, while the state sold for the most part to speculators. Of the approximately 250,000 acres sold by the state in 1882 only a very small proportion went to settlers.[25]

Another source of great loss was under-appraisment. It was rumored in 1849 that in some instances land worth $3.00 was assessed at ten cents an acre and was then preempted by the appraisers.[26] It is said that not a few of Wisconsin's millionaires derived their wealth from the purchase of valuable timber lands at ten and fifteen cents an acre. In 1852 it was reported to the Assembly that the 500,000 acre tract was appraised at from five to fifty cents an acre. Persons acquainted with some of the lands selected as a part of the tract pronounced them entirely worthless. It was said that the commissioner appointed to select the 500,000 acres selected from view a few choice pieces, which he himself preempted, and then selected the rest from the land office plats without seeing or examining the lands.[27] The findings of the Select Committee of 1856 corroborate for the most part these rumors and reports. Many appraisals were made contrary to law, which required that appraisers be sworn before entering on their duties and that their oath be annexed to the appraisal. Appraisers were supposed also to make a joint report to the secretary of state. The appraisal of much of the 500,000 acre tract, supposed to be choice and selected lands, was found to be at five, ten, fifteen, and twenty cents an acre. Clearly there had been gross dereliction of duty in either the selection or the appraisal of these lands. The average price realized up to that time from the 500,000 acre tract was $1.42 an acre; while the average price from the sale of the sixteenth sections, which were chance locations, was $2.74. Knight figured in 1885 that the school lands had yielded an average of $1.87.[28]

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[25] *Governor's Message*, 1883, 28-29.
[26] *Madison Argus*, Feb. 6, 1849.
[27] Ibid. Feb. 4, 1852.
[28] Knight, supra, 111.

The conditions of sale and the prices of state lands will now be considered. The Revised Statutes of 1849 provided that the minimum price of every tract or lot of school and university lands should be the appraised value thereof, including the appraised value of improvements and also the expense of appraising and subdividing the lands and that no lands should be sold for less than their minimum price.[29] In 1850 the minimum price of university lands was placed at $10 an acre and the law declared that no further appraisement was necessary. The next year this minimum was reduced to $7, but it was expressly stipulated that no university land should be sold at less than its appraised value. In 1858 the minimum price was further reduced to $3.[30] In 1863 the commissioners of the school and university lands were directed to reduce the price on lands that had been sold, forfeited and resold to the state by deducting from the price theretofor set upon the lands by the law the amount of interest, penalties and advertising due the state in connection with such lands and also twenty per cent of the amount of the principal due the state at the time of forfeiture, but in no case was land to be sold for less than seventy-five cents an acre exclusive of taxes due and unpaid.* The price of all lands that had been offered for sale and remained unsold was reduced thirty-three and one-third per cent, but no such land was to be sold for less than seventy-five cents an acre. The next year, 1864, the price of all university lands that had not been appraised was fixed at $3 an acre.[31] A law of 1883 provided that all state lands that had not been offered for sale should be offered at the minimum price of $3 an acre and if not sold should be designated as unsold.[32] In 1852 the minimum price of lands in the 500,000 school tract was fixed at $1.25,[33] but in 1863, as

[29] *Revised Statutes*, 1849, ch. 24, Sec. 4.

[30] *General Laws* 1850, ch. 176; *Laws of 1851*, ch. 392; *Revised Statutes* 1858, ch. on Public Lands.

*Unpaid taxes with interest at twelve per cent became a charge on lands sold on credit. The same law covered the non-payment of such charge as covered the non-payment of principal or interest when due.—*General Laws* 1853, ch. 92.

A law of 1858 provided for a penalty of twenty-five per cent of the amount of taxes unpaid on lands sold on credit.—*General Laws* 1858, ch. 82.

[31] *General laws* 1863, ch. 287: Ibid. 1864, ch. 455.

[32] *Laws of 1883*, ch. 332, Sec. 1.

[33] *Laws of 1852*, ch. 9.

has been noted, the price of lands that had been offered for sale and remained unsold was reduced thirty-three and one-third per cent. In 1864 it was provided that all school lands that had never been appraised should be declared worth $1.25 an acre. If the lands had been disposed of to settlers there would have been great social utility in so low a price but for the most part sales were to land speculators, consequently a low price simply enabled that class to grow rich at the expense of the settler and of the state. Accordingly, there is complete justification for the contention of the Governor in 1883 that the fixed price of $1.25 an acre was unwise and that there was no reason why the trust funds of the state should not have reaped the benefits of the proximity of state lands to markets and railroads.[34] In 1866 the minimum price of the agricultural college lands was fixed at $1.25 an acre.[35] A law of 1855 granted preemption rights in swamp lands or overflowed lands to persons who before the day of sale of the land desired took up a residence thereon, cultivated the land and made improvements to the value of $10 per forty acres. Not more than 160 acres could be purchased by one person under this right. The price was fixed at $1.25 an acre. In 1856 a law was enacted declaring that after October 15 of that year there was to be no further preemption of swamp or overflowed lands and raising the price to $5 an acre.[36] This repealing law was enacted upon the recommendation of the Governor, who maintained that as much of the land in question was timber land and good for nothing but its timber, the preemption law was a license to commit waste at the expense of the state. The preemptor stripped the land of its timber and the state had no guarantee that anything would ever be paid. The state was under obligations to sell the land at $1.25 an acre, but the preemptor was under no compulsion to buy at all, while the law gave him license to commit upon the land whatever waste he pleased.[37] The commissioners of public lands maintained, however, that while the Act of April,

[34] *Governor's Message* 1883, 29.
[35] *Laws of 1866*, ch. 121.
[36] *Laws of 1855*, ch. 84, Sec. 10; *Laws of 1856*, ch. 125, Sec. 3.
[37] *Governor's Message* 1856, 14.

1855 invited a settlement of the swamp lands by the citizens of the state, the Act of October 1856 operated as a prohibition of such settlement, since it repealed the preemption law and raised the price to five dollars an acre, one half of which in the case of timber lands was to be paid in advance. The commissioners contended that since the settler acquired no future rights by his occupancy of the swamp lands and since the price of such lands exceeded greatly the price of school and university lands, the swamp lands would not be settled and consequently destruction and waste on such lands were bound to ensue. The commissioners recommended a reduced minimum price and expressed faith in public sale at Madison's insuring prices that would yield increased returns from the lands. As it could not be determined from the plats which were timbered and which were not timbered lands, they recommended that the distinction as to payment based upon whether lands were timbered or not be dropped.[38] It cannot be determined to what extent, if at all, the commissioners were prompted in their recommendations by the interests of land speculators, but it is a fact that the latter brought great pressure to bear on the legislature and in 1857 the law of 1855 was revived.[39] In 1865 it was enacted that sale of swamp lands and overflowed lands should be for cash only and that the minimum price should be seventy-five cents. Two years later it was provided that fifty cents might be charged in Wood and Juneau counties.[40] In subsequent years a uniform price of fifty cents was established in many counties. The Revised Statutes of 1878 fixed the following minimum prices for swamp and overflowed lands.

1. Lands offered at public sale prior to April 15, 1863 and remaining unsold, 75 cents.

2. Lands offered at public sale since April 15, 1863 and remaining unsold, $1.25.

3. Lands sold for $1.25 or more and forfeited to the state prior to April 19, 1867, $1.25 and all taxes remaining unpaid at the time of forfeiture.

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[38] *Report of Commissioners of Public Lands*, 1856.
[39] *General Laws* 1857, ch. 57; *Milwaukee Sentinel*, Feb. 27. 1857.
[40] *Laws of 1865*, ch. 537, Secs. 7, 19; *Laws of 1867*, ch. 50.

4. Lands sold for less than $1.25 and forfeited and all lands forfeited since April 19, 1867, amount due at time of forfeiture for principal, interest, penalty, unpaid taxes, costs and charges.

5. Lands in certain counties and certain lands in certain other counties, 50 cents.[41]

The first law relating to the sale of the state lands provided that in the year 1850 the commissioners of school and university lands should sell at public auction all of the sixteenth section grant that had been duly appraised, except such lands as they with the approval of the Governor, should deem it wise to withhold from sale. After the year 1850 lands remaining unsold and having been duly appraised were to be sold from time to time at the discretion of the commissioners and the Governor. The constitution in providing for the sale of the lands does not direct that the Governor should have any connection with such sales and in fact he has not had. Whenever there is water power on lands it is optional with the commissioners whether all the tracts on which such power is found shall be sold separately or as a whole. No person is, however, allowed to buy more than 160 acres of such land. Lands that have once been offered at public sale and forfeited lands that have been re-offered at public sale are subject to private sale to the first person making application for them and complying with the terms of sale. The price of such lands is the amount of their last appraised value. If two or more apply for the same piece of land at the same time, sale is to be made to the highest bidder. The Statutes of 1849 provided that the commissioners should not demand at the time of sale of any land less than ten per cent nor more than seventy-five per cent of the purchase price; interest on the balance to the first of the following January was also to be demanded. In 1863 it was provided that at least twenty-five per cent of the purchase price should be paid at the time of the sale.[42] A law of 1855 provided that pine lands should be sold for cash only. This law was called forth by the practice so detrimental to the state of purchasing pine lands on credit, stripping them and then forfeiting them valueless. In 1878 it

[41] *Revised Statutes* 1878, ch. 15, Sec. 205.
[42] *Laws of 1863*, ch. 287.

was provided that all sales of swamp land in Marathon county should be for cash only.[43] A law of 1903 provided that twenty per cent of the sale price should be paid at the time of sale and the balance with interest at seven per cent within sixty days, which time the commissioners might extend to six months.[44] In 1862, as has already been noted, Governor Harvey declared that the practice of selling state lands on credit with a small cash payment had proved a cheat and a delusion. He recommended that the practice be discontinued, except perhaps in the sale of "actual farm lands in limited quantities and in good faith for immediate settlement and improvement."[45] In 1905 it was enacted that all sales of public lands should be for cash, to be paid at the time of sale.[46] In 1858 it had been provided that the full price of university lands should be paid at the time of sale, unless security against waste, loss through trespassing, etc., were given, in which case the commissioners were not obliged to require any cash payment.[47]

As provided by the Statutes of 1849, the balance of the principal was to be paid in one or two installments, at the option of the purchaser, at any time within ten years. The interest at seven per cent was payable in advance on the first of each January or within thirty days thereafter. In several years, owing to hard times, the time of payment was extended. In 1863 the times of payments on land sold before 1856 were extended ten years.[48] It was provided in 1849 that when the balance of his purchase money became due the purchaser might retain the balance from year to year as a loan, but the legislature reserved the right to change the law so as to require payment at any time after one year from the time when the original credit expired. In fixing the amount of purchase money to be paid at the time of sale, the commissioners were to be guided by the amount of permanent improvements on the land sold, not likely to be destroyed, the proportion of timber, mineral land or prairie

[43] *General Laws* 1855, ch. 21. *Revised Statutes* 1878, ch. 15, Sec. 209.
[44] *Laws of 1903*, ch. 450, Sec. 15.
[45] *Governor's Message* 1862, 6.
[46] *Laws of 1905*, ch. 184.
[47] *Revised Statutes* 1858, ch. 28, Secs. 28, 29.
[48] *Laws of 1863*, ch. 134.

and the general situation and character of the land with respect to its liability to be injured or of becoming less valuable because of trespass or waste of any kind. Whenever they deemed it advisable the commissioners were at liberty to require a bond and mortgage to secure the payment of the balance of the purchase price. Such mortgages were to be on unincumbered real estate double in value the amount of the purchase price remaining unpaid. All payments on account of school and university lands were to be in specie. A law of 1850 provided that, when in the opinion of the commissioners, school lands were an adequate security for their purchase price and would continue to be so, thirty years credit for the whole purchase price might be granted.[49] It has been noted how this privilege was abused and how consequently the school fund lost very heavily. Titles of school and university and other state lands also remain in the state until patents are issued, and patents are not issued until the purchase price and interest are paid in full. When land was purchased on credit the purchaser received a certificate of sale, which conferred no right to cut down, destroy or carry off the land any wood or timber or any mineral without the written consent of the commissioners and only to the extent of such consent, but the purchaser was allowed to use freely any wood or timber on the land for the erection of fences or buildings thereon. He might also take firewood for the use of his family and nothing in the clause prohibiting him from cutting timber was to be so construed as to deny him the right of "actually and fairly" improving his land for purposes of cultivation. Whenever any lot or parcel of land had improvements on it and the same had been appraised and returned by the appraisers, the purchaser of such land if he did not own the improvements was under obligation to compensate the person owning the same, which person might recover by suit the value of his improvements, and if the improvements were not paid for within two years from the time of sale the certificate of sale became void and the commissioners might resell the land.[50]

[49] *Laws of 1850*, ch. 236, Sec. 12.

[50] *Revised Statutes* 1849, ch. 24, Secs. 2, 3, 7, 8, 10, 11, 14, 17, 18, 21, 25,

The commissioners were prohibited from purchasing state lands either in their own name or that of any other person. In 1855 this prohibition was extended to clerks and other persons employed in the land office, and the Revised Statutes of 1878 provided that for every tract or parcel purchased in violation of these laws the offending party was to forfeit $250.[51] In 1866 all the laws governing the sale of school and university lands were extended to apply to the agricultural college lands.[52] The commissioners were permitted to lease from time to time for periods not exceeding one year and until they should be sold all education lands having improvements on them. Such leases were to contain "proper covenants" protecting the lands against trespassing and waste.[53] A law of 1869 empowered town boards of supervisors to lease swamp and overflowed lands for the cutting of grass and picking of cranberries. The rents went into the town drainage fund.[54]

Preemption rights, forfeiture and redemption of lands remain to be treated. At the beginning of the state's history it was enacted into law that all persons who were in 1849 and had been prior to August 12, 1848 occupying any school or university lands, and any person or persons who, at the time of appraisal, were in possession of any of the state lands either by lease or by express permission of the school commissioners of the town in which the lands were located, in cases in which the lands were situated in counties under the township system of government, or without such permission in the case of lands situated in counties under the county system, had preemption rights to the land that they occupied. No such right, however, extended to more than the least subdivision of the section as divided by the appraisers, and in no case was it to extend to more than forty acres. The price to be paid was the appraised value but in no case was it to be less then $1.25 an acre. Preemption rights were to be proved before the land commissioners

30, 31, 37. (The Revised Statutes of 1849 contain the first laws relating to the sale of State Lands.)

[51] *General Laws* 1855, ch. 82. *Revised Statutes* 1878, ch. 15, Sec. 188.

[52] *Laws of 1866*, ch. 121.

[53] *Revised Statutes* 1849, ch. 24, Sec. 51.

[54] *Laws of 1869*, ch. 151, Sec. 20.

by the affidavits of two or more disinterested persons, citizens of the state, and unless proved prior to the day set for the sale of the preempted lands, such rights were forfeited.[55] In 1850 it was enacted that any person who at the time of the location for school purposes of any tract in the 500,000 acre grant had made an actual settlement on the tract and had cultivated it had a preemption right to the same. This right extended to no more than 160 acres and the price to be paid was not to be less than $1.25 an acre. In 1858 this right was limited to 40 acres. A law of 1851 granted preemption rights in school lands to every person who at the time the law was passed had made either a settlement or improvements. Settlement but not improvements made subsequent to the enactment of this law established a preemption right. This law fixed no minimum price. Another law of the same year provided that preemption rights to school or university lands might be established at any time prior to the day when they were offered for sale.[56] A law of 1864 established preemption rights to swamp and overflowed lands. Any resident of Wisconsin who was or should be in actual occupancy for agricultural purposes of any swamp or overflowed lands belonging to the state that had never been offered for sale and who had or should have made improvements on the land to the extent of $10 for every forty acres prior to the first advertisement of such land for sale was declared to have the right when the land was offered for sale to purchase the same at $1.25 an acre, if he proved his right as provided for by law. This right of purchase was forfeited if payment was not made within ten days of the time prescribed by law for the sale of the lands. Persons filing preemption claims with the registers of deeds in their respective counties had a right to occupy the lands claimed, until they were sold, but they were prohibited from cutting more timber from the lands than was necessary to their use. Who, however, was to decide how much was necessary? This law undoubtedly made the way to waste more open, and is to be criticized further because

[55] *Revised Statutes* 1849, ch. 24, Sec. 59.

[56] *Laws of 1850*, ch. 236, Sec. 9; *Laws of 1851*, chs. 35, 200. *Revised Statutes* 1858, ch. 28, Sec. 17.

the ten day limit was too short.[57] A law of 1883 allowed actual settlers desiring state lands for agricultural purposes to enter at $1.25 an acre not to exceed five contiguous subdivisions and not exceeding 200 acres to one person. Two years later the preemption laws were repealed, but persons who had then acquired rights under them were not affected by the repeal.[58]

There remains to be noted the preemption law relating to railroad lands granted to the state. A law of 1869 provided that any male adult resident of Wisconsin who was a citizen of the United States or had declared his intention of becoming one might, under certain conditions, have a preemption right to odd-numbered sections of certain lands in Pierce, St. Croix, Burnett, Barron, Douglas, Ashland, and LaPointe counties, which sections had been granted to Wisconsin to aid in the construction of railways. This right was contingent upon residence on the land or the making of improvements worth $100 before March 1, 1869. No more than 160 acres could be purchased under this right and the minimum price was fixed at $2.50 an acre. A preemption right to such land was to be proved and the price paid within twenty days of the time when any railway had constructed twenty consecutive miles so as to include the land preempted.[59]

The forfeiture and redemption of lands will now be taken up. Non-payment of either principal or interest when due worked a forfeiture of all right and interest in the land purchased. If, however, at any time before the land was resold, payment was made of the amount due, with interest and the costs occasioned by the delay and also a penalty of five per cent of the whole sum owed, resale was prevented and the original contract revived. The penalty was reduced to three per cent in 1862.[60] By a law of 1853 the commissioners were obliged to advertise as open to sale to any one lands that had been forfeited for six months. The minimum price was to be the amount due plus the costs of sale.[61] The Governor maintained in 1855 that in

[57] *Laws of 1864*, ch. 156.
[58] *Laws of 1883*, ch. 332, Sec. 3; *Laws of 1885*, ch. 383.
[59] *Laws of 1869*, ch. 161.
[60] *Revised Statutes* 1849, ch. 24, Secs. 15, 16; *Laws of 1862*, ch. 269, Sec. 1.
[61] *General Laws* 1853, ch. 43.

many cases interest due to the trust funds was not paid when due, because of ignorance or accident, and he recommended therefore that purchasers of lands who failed to pay their interest when due be protected by the granting of a reasonable equity of redemption when such lands had been entered by other persons and that the time for redemption after the advertising of the lands for resale be extended.[62] The law enacted in this year provided that lands that had been forfeited for three months be advertised for sale, but that the sale should not take place less than three months nor more than six months after the advertisement appeared. This law was extended in 1862 to apply to swamp as well as to school and university lands.[63] A law of the same year, 1862, declared that no land mortgaged to the state by a union soldier or non-commissioned officer was to be sold prior to three months after his discharge. Any soldier or non-commissioned officer, his heirs, executors, administrators or assigns might within three months after his discharge or the close of the war redeemed land mortgaged to secure a loan from the state or any lands held on certificate and forfeited, by paying the interest due from January 1, 1861. This law applied only to volunteers; two years later it was extended to apply to drafted men also.[64] In 1872 it was enacted that lands held on certificates which lands had been sold because of non-payment of taxes or of interest might be redeemed at any time within ninety days of the date of sale, provided that the former owner could show that at the time of sale the land was under cultivation in whole or in part or adjoined and was being used in connection with other cultivated land owned by him. The redemptioner was obliged to pay to the state treasurer for the benefit of the purchaser the amount paid for the land at its resale, "with twenty-five per cent of the amount paid for taxes, interest, and costs." No patent to such lands was issuable until the ninety days had expired. Later the law was made less liberal toward the redemptioner. He might redeem his land at any time before its sale by paying the interest

[62] *Governor's Message* 1855, 9.
[63] *Laws of 1855*, ch. 22; *Laws of 1862*, ch. 129.
[64] *General Laws* 1862, ch. 131.

due, taxes unpaid, cost occasioned by his delay in paying and damages amounting to three per cent of the whole sum owed for the land. In 1889 it was provided that redemption might be made at any time within five days of the sale.[65]

The wasteful and often shamelessly corrupt management of Wisconsin's public lands illustrates two very important principles of public financial administration; first, it is folly to economize unduly in the management of great public interests, and second, laws will not execute themselves. The framers of the Wisconsin Constitution provided for a false economy in the management of the state lands when they placed the responsibility for that management in the hands of officers whose other duties took first place, instead of establishing or providing for the establishment of a well organized department for the management of that splendid source of wealth bestowed upon the state by the National Government. The legislature enacted many land laws that were excellent in themselves, but which failed to accomplish their ends or did so only in a minor degree, because good and efficient administrative machinery for their enforcement was lacking. The problem was by no means an easy one, but the way in which its public lands and its trust funds have been managed should be a source of regret and of shame to the great state of Wisconsin.

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[65] *Laws of 1872*, ch. 133. *Revised Statutes* 1878, Sec. 225. *Laws of 1889*, ch. 483.

CHAPTER VI

FINANCIAL ADMINISTRATION

I. The Financial Administration of the State Departments

The first systematic and thorough investigation of the State Departments was made in 1856. In the chapter on the Administration of the Trust Funds are given the results of that investigation and of others in so far as they had to do with the school land office. In 1855 numerous persons complained that they could not get their claims against the state satisfied. When at the end of that year State Treasurer Janssen retired from office, it was rumored that he was short in his accounts, and such was indeed the case. Accordingly, an investigation of his office and of the other state offices was undertaken by a select joint committee of the legislature.

This committee found that the books in the office of the Treasurer and in the School Land Office had been kept in a loose and careless manner, in a way totally devoid of system. In the school land office the books were disfigured and defaced by erasures of names and figures and by the substitution of other names and figures with interpolations, remarks, and alterations, thus making it impossible to ascertain original entries, dates, or the amount of principal and interest originally paid. The entries in the treasurer's office presented no regular succession of dates; his vouchers were in a confused mass; many were missing; many offered no evidence of the payment of money to any one.[1] In several instances money had been drawn from the treasury without authority of law. State officers and

[1] *Report of Joint Select Committee* 1856, 4 in *Wisconsin Miscellaneous Pamphlets*, XXVIII.

clerks anticipated their salaries, leaving only a slip of paper marked "good for so many dollars." Sums were paid to persons who merely expected appropriations in their favor.[2] Beriah Brown was paid $3,000 before any appropriation to him had been made. In some cases there had been double payments.[3] Payments on the sales books of the land office to the amount of $5,900.61 did not appear on the Treasurer's books. Payments on land certificates that could not be found on the Treasurer's books amounted to $16,245.94. Payments on loans to the amount of $575 had not been entered in the books of the Treasurer.[4]

Testimony was given showing that while Treasurer Janssen was absent from Madison, Seaver, his deputy, was grossly inattentive to his duties. He was frequently found intoxicated in his office with the vaults open. Persons not connected with the office were sometimes with him. On two occasions he opened the vault at night. At another time he and another man both intoxicated were discovered in the vault looking at the money. Liquor was kept in the vault. One night, on which Seaver went into the vault, he lost several hundred dollars at a gaming table in Madison. All these things were well known about the capitol at the time.

There was manifested at the time considerable disposition to excuse Janssen, at least in part. The *Appleton Crescent* said, "No one who knows him regards him as a willful plunderer. He left his official matters—that sacred school fund—in the hands of harpies, political adventurers, mere speculators and spendthrifts. He must suffer the consequences of an overweaning confidence in the rotten-hearted men who were washed to the surface by the waves of ill-directed political sentiment."[5] In the legislature, Mr. Noggle declared that Janssen had been the victim and tool of the most infamous set of scoundrels that ever got into office.[6] There were some, however, who were dis-

[2] Ibid. 6, 7.
[3] Ibid. 41.
[4] Ibid. 99, 162.
[5] Quoted in the *Milwaukee Sentinel*, Feb. 19, 1856.
[6] *Milwaukee Sentinel*, Feb. 21, 1856.

inclined to believe that Janssen had been a mere tool. It was said that he had been nominated for the office of treasurer not because of any special fitness for the place, but merely in order to catch the German vote, without which "Sham Democracy" in Wisconsin was a mere ghost of a party.[7] In 1857 Janssen petitioned the legislature asking that his liabilities to the state be canceled. He affirmed that he had gone out of office no better off than when he entered office, that the deficit[8] in the treasury arose from carelessness in bookkeeping and the dishonesty of his assistants and others who had access to the vaults, that he was obliged to leave the business of his office to his assistants during a considerable time because of private misfortunes, the burning of his house and of one of his children, and the death in rapid succession from cholera of his brother, his father-in-law and three of his children, that under the circumstances he would have resigned his office if he had not thought that the Governor would have demanded from the Treasurer's office the quarterly reports required by law. He affirmed further that not a cent of the deficit had been appropriated to his own use or to the use of any other person through him and that he was not guilty of gambling or speculating. The *Milwaukee Sentinel* asked whether the interests of the public demanded that Janssen be made the victim of his political friends whom he had trusted and be stripped of his little property or whether the state should charge the deficit to profit and loss and thank Heaven that it had gotten rid of the "Forty Thieves" with no greater loss.[9] However, as is shown in the chapter on the Administration of the Trust Funds, the "Forty Thieves" cost the state much more than Janssen's deficit. After much debate and much amending and referring and re-referring to committees, the assembly by a vote of 46 to 41 passed a bill to discontinue temporarily the suit against Janssen and his sureties and directing the Governor to settle with the sureties if a settlement could be made on favorable terms. In the Senate after

[7] *Milwaukee Sentinel*, Feb. 20, 1857.

[8] The deficit was $34,973.95, *Milwaukee Sentinel*, Feb. 16, 1856; later it was reduced to $31,318.54, *Secretary of State's Report*, 1858, 132.

[9] *Milwaukee Sentinel*, Feb. 10, 1857.

a long discussion action in relation to the matter was postponed indefinitely by a vote of 13 to 8.[9] Janssen's deficit continued to be included among the resources of the state until 1860, when it was dropped, because there appeared to be little prospect that any of it would ever be recovered.

The committee of investigation, which was a standing committee for some time, in 1858 found the Treasurer's office in much better condition than in 1856. The books and papers were found to be "neatly, systematically and properly kept;" the business routine of the office was "correct and creditable." In the management and control of the funds, however, there appeared to have been a degree of laxity dangerous to the Treasury. The Treasurer, Samuel D. Hastings, testified that the principal part of the funds paid over to him by his predecessor was in paper and a considerable part in *wild cat* currency. Much of this currency bore evidence of having been brought direct from the Bank Comptroller's office to the treasury. The investigation revealed that there obtained an arrangement for reciprocal private accomodation and advantage between the State Treasurer, the Bank Comptroller, and the Dane County Bank and probably other banks also. The committee declared that the practice of receiving the paper of specie paying banks, which had a known "local habitation," in payment of state indebtedness might perhaps be permissible, but to allow the treasury to be used by bankers and the public funds to be exchanged for other and less convertible paper was reprehensible. Reprehensible was a mild term for such a practice, which was nothing short of grossly and flagrantly criminal. In fact it was not lawful to receive any kind of paper money for dues to the state.

In 1854 an attempt was made to make state bank notes receivable for taxes, but the bill failed to pass, in consequence of which there was much excited discussion and condemnation of the provision requiring the payment of taxes in specie only. Gold was then at a premium of one per cent; silver, at a premimum of five per cent. The *Watertown Register* declared that

[9] *Milwaukee Sentinel*, Mar. 2, 1857.

if the state bank paper was not good enough for the state, it was not good enough for the people and in that case the banking law should be repealed. The phrase "Specie for the Government and rags for the people" was much used in the discussions.[10] In 1855 the State Treasurer had presumed to declare that the notes of banks were receivable.[11] Three years later a resolution was introduced in the legislature to instruct the treasurer to receive the notes of specie paying banks, but so great was the feeling against the *wild cats* that the resolution was voted down. It was declared that the treasury had become a rendevous for *wild cats*, which declaration was borne out by the investigation. There was considerable difference of opinion as to whether the Treasurer should be compelled to received notes. On the one hand it was said that money good enough for the people was good enough for the state; on the other, that paper money was so much debased by *wild cats* that it was not good enough for either people or state. The discount at that time on bank paper was four per cent. The Treasurer issued a specie circular declaring that only gold or silver would be received by the state.[12] However, corruption in the administration of the Treasurer's office continued. Specie was required in payment of public dues, but in many cases, if not in all, depreciated Wisconsin bank notes were paid out to the creditors of the state. In a letter to the *Wisconsin Patriot* a citizen asked what became of the gold paid into the treasury and of the eastern drafts, a considerable number of which were received from persons in the East who held Wisconsin land certificates. Both gold and eastern drafts were at a premium in Wisconsin currency, and it was intimated that the drafts were disposed of to Holton's Bank in Milwaukee. It was very reasonably demanded by this correspondent that if the state was to conduct a broker's shop, the profits therefrom should go to the state.[13] The agitation of the matter led to the introduction in the legislature of a bill to allow payments to the

[10] *Milwaukee Sentinel*, Feb. 9, 1854.
[11] Ibid. Jan. 22, 1855.
[12] *Democrat-Patriot*, Jan. 21, 1858.
[13] *Wisconsin Patriot*, Jan. 25, 1859.

state in currency. It was affirmed that it was not the purpose of the bill to countenance depreciated bank paper, but to break up an unfair system whereby the people were oppressed and a few favorites were benefited. The chief argument for the bill was that a currency used by the people and regarded as safe in their private business transactions was good enough for taxes. Money good enough for the people was good enough for the state. There was much vigorous protest against the coin clause in the tax laws, but on the other hand, the "Rag Bill" was attacked as being favorable to the banks and as an endorsement of *rags*.[14] Hard money philosophy and political and personal considerations killed the bill.

The Investigating Committee in 1860 reported that the business of the Treasurer's office was conducted in a most concise and business-like manner. The committee made no adverse observations in regard to the Treasurer's office, but it disclosed a scandalous condition respecting the public printing. In the period from February 25, 1859 to January 1, 1860 the public printer received from the state $38,176 for work the contract price of which was but $18,553. He was overpaid to the extent of $19,623.[15]

The writer will now revert to the investigation of 1858, which revealed a rather unsatisfactory condition of affairs in the Secretary of State's office. The records and papers were in good order and accurately kept. The system of auditing and of settling miscellaneous accounts, however, was condemned as faulty and as bringing a ~ain upon the treasury. Some of these accounts or claims were adjusted through the legislature; some, through the Secretary of State. In the case of claims adjusted through the legislature, it was impossible to prevent designing persons from obtaining duplicate appropriations at two different sessions. One legislature would pass upon a claim and appropriate the amount found due; the next legislature would be presented with a claim for the balance with large ad-

[14] Ibid., Feb. 4, 1859.

[15] Appendix, *Senate Journal* 1860, Document A.

It should be noted that in 1894 the State secured judgments against former State Treasurers for $327,902.55, on account of misappropriations of interest on State funds. *Secretary of State's Report*, 1893-94, 29, 30.

ditions and would be besieged until the entire amount was paid. It was impossible under this system to prevent the payment by a subsequent legislature of the balance rejected by a preceding legislature. Likewise, if the duty of adjustment fell to the Secretary of State, with no more specific and guarded provisions of the law than then obtained and no more rigid accountability was required of the claimant or of the officer, the state was bound to suffer loss.

Great irregularity was found in the printing accounts, which were large. Nearly every account was made out and audited without strict regard to the provisons of the contracts. Lack of technical knowledge in the Secretary of State made it easy to deceive him as to the amount of work done. In one case the excess over the contract price was $18,000. For a $400 job, $2,100 was paid. Furthermore, these two contracts were unauthorized by law. Certain blanks contracted for at the rate of $10 cost the state $20. Other extraordinary accounts were audited. Warrants were drawn on the Treasurer without proper authority. Clerical service in the office was paid for at a high rate. The Committee recommended the creation of the office of Comptroller of the Treasury, as it was impossible for the legislature to act intelligently on every claim presented, and impracticable for the Secretary of State to do so along with all his other duties.[16]

A law of 1899 made provisions for the devising of a systematic and unified system of bookkeeping in the State Departments. Two years later a law was enacted providing that the system devised be put into practice so far as was practicable. It was provided that the Governor might make modifications but the law stipulated that the system adopted must have among others the following characteristics:

1. All moneys received by any person in behalf of the State shall be transmitted to the Treasury or to a State depository designed by the Treasurer. Deposits shall be made at least once a week or oftener if required by the Governor.

2. The Treasurer shall transmit to every person depositing

[16] *Report of Joint Legislative Committee to Investigate the State Departments*, 1858.

money with him a receipt therefor countersigned by the Secretary of State.

3. No money shall be paid out of the Treasury except on a warrant drawn by the Secretary of State, who shall require in all cases an itemized voucher showing for what purpose the debt has been contracted.[17]

The state officers objected to the system devised by the experts, hence Governor La Follette had made a study of the Wisconsin system as compared with the systems of Massachusettes, New Jersey and New York. This investigation revealed that the Wisconsin systems of bookkeeping and accounting were superior to those employed in the other states. The Wisconsin system was found to be characterized by great care, minuteness and detail. It was faulty in that receipts and expenditures were not centralized. This painstaking expert examination of 1902 gave evidence of great thoroughness, accuracy and detail "and a jealous care for the interests of the state which makes it safe to say that every dollar of the public money has been accounted for."[18] In 1905, however, Governor La Follette observed, "Existing laws are wholly inadequate to insure the safekeeping and integrity of the funds and securities of the state in the state treasury." Wisconsin's great reform Governor had reference to the fact that all state moneys on deposit in banks* are drawable by check signed by the state treasurer alone, and that securities owned by the state can be negotiated by his simple endorsement. The Governor declared that unlimited power to dispose of the funds and securities of the state ought not to be lodged in a single officer. Some valuable suggestions were made but the legislature did not act upon them.[19]

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[17] *Laws of 1899*, ch. 133; *Laws of 1901*, ch. 433.

[18] *Governor's Message*, 1903, 7, 8.

* "The secretary of state shall draw his warrant on the state treasurer payable to the claimant for the amount allowed him upon every claim or account audited as aforesaid, specifying from what fund to be paid and the particular act or part of act which authorizes the same to be paid." Enacted since this was written. *Laws of 1907*, ch. 139.

[19] *Governor's Message* 1905, 5-8.

II. Budgetary Practice

A law of 1848 ascribed to the Secretary of State as ex-officio Auditor the following duty, "to exhibit to the state legislature at its annual meeting a complete statement of the funds of the state, of its revenues, of the public expenditures during the preceding year, with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditure and distinguishing between such as are provided for by permanent or temporary appropriations and such as require to be provided for by law, and showing the means from which such expenditures are to be defrayed."[20] In 1852 the fiscal year was changed so as to end September 30, and the report indicated above was required to be made to the Governor.[21] The financial history of Wisconsin has been marked by little success in making revenues and expenditures balance. In the first ten years of the state's history, 1848 to 1858, expenses were always in advance of revenues. In 1859 the Governor observed that because of overestimates of revenue and underestimates of expenses a floating debt had been accumulating gradually year by year.[22] In the period 1883 to 1897, except in 1887, no state tax for general purposes was levied. Many times in this period the state treasury was in a sad condition. Many times the state would have been unable to pay its current expenses if the Treasurer had not been able to induce the railroads to pay their taxes in advance of the time when they became due and to secure loans from the banks.[23] Much credit is to be given Governor Scofield for starting a financial reform in 1897. The favorite practice, when the general fund became depleted was to borrow from the trust funds, a practice wholly illegal until 1895, when, after a period of disuse, it was resumed and a law authorizing it was enacted.[24]

[20] *Laws of 1848*, 116, Art. 2, Sec. 10.
[21] *Laws of 1852*, ch. 99.
[22] *Governor's Message*, 1862, 17; 1859, 1.
[23] *Senate Journal*, 1897, 177. *Governor's Message* 1899, 7-8.
[24] *Laws of 1895*, ch. 52; *Laws of 1899*, ch. 147.

Especially in the early years of the state's history a faulty system of auditing undoubtedly increased the expenses of the state. In 1853 the Secretary of State complained that because there was no requirement that claims be passed through his hands he rarely saw a claim before the time of payment. Claims thrown in a mass upon the legislature were passed upon hurriedly by committees in general unacquainted with the facts and having no time for investigation. It was recommended that no claims except those properly denominated legislative expenses be paid until passed upon by the secretary of state or auditor. It was suggested that the plan adopted in 1851 with respect to state printing be made general. This plan provided for the payment of three-fourths of a claim when endorsed by the auditor and the payment of the balance when approved by the proper legislative committee.[25] A law of 1857 made it the duty of the Secretary of State to examine and determine the claims of all persons against the state in cases in which provision for payment had been made by law, and to endorse upon such claims a certificate of the amount due and allowed and from what fund to be paid. A complete list of such audited accounts it was provided should be reported to the legislature. It was further provided that any such claim should be sworn to by the claimant or his agent and certified to by the officer ordering or making the claim.[26]

In 1857 the Secretary of State made the significant observation that the liabilities of the state and the claims upon the treasury of which his department had no knowledge made it impossible for him to present a correct estimate of expenditures.[27] The following quotation from the report of the Secretary of State in 1868 indicates an unsatisfactory working of the budget system. "Any person at all familiar with the ordinary course of legislation regarding the annual expenditures will see at once that it is impossible to more than approximate a correct result, since there are no data for an estimate of the

[25] *Secretary of State's Report*, 1853, 13.
[26] *General Laws*, 1857, ch. 61.
[27] *Secretary of State's Report*, 1857, 89.

appropriations to be made by the succeeding legislature."[28] The report of 1877 reveals a somewhat better condition. "The accuracy of the estimates will, of course, depend largely on the action of the next legislature in making appropriations, but as there will be ample opportunity for a review of such estimates by the legislature before any tax based thereon is levied, any change that circumstances may require, or which legislative action may render necessary can easily be made."[29]

In 1865 the Secretary of State, as Auditor, had complained that while the law had provided for the checking of the auditor by the treasurer the legislation for many years past had been such as to render the former powerless as a check upon the latter. Laws had been enacted authorizing the disbursements of large sums, of the disbursement of which the auditor was entirely ignorant until informed by the treasurer. Such a system made it impossible for the auditor to know the condition of the treasury and to exercise a controlling influence over disbursements as the framers of the Constitution undoubtedly intended he should do.[30]

At this time the financial relations of the benevolent institutions with the auditor's office were also faulty. The law required that "the Secretary of State shall from time to time require all persons receiving money or securities, or having the disposition or management of the property of the State, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require." This section was virtually abrogated in part by the practice of paying money directly to the managers of the state benevolent institutions. These managers expended such moneys without being accountable to any one but the legislature. The examination of their accounts by a legislative committee was merely formal and certain to be superficial because of the short time given to the work. It was recommended that the money be drawn on dupli-

[28] Ibid. 1868, 7.
[29] Ibid, 1877, 22.
[30] Ibid, 1865, 78-80.

cate vouchers, filed with and audited by the secretary of state. By 1872 the above defect appears to have been remedied.[31]

III. The System of Funds

The fund system of accounting was adopted in Wisconsin in 1850.*

a. The General Fund.

In the beginning the revenues of this fund were derived solely from the state tax levied in the counties and from the payment of sums due the Territory. From it the ordinary expenses of the state government were paid. In 1851 the fund began to receive revenue from the per mile of line tax on telegraph companies. The proceeds of bond sales, in general, go into this fund. The following additional sources of revenue have been created:

1852—hawkers' and peddlers' taxes.

1853—bank taxes.

1855—railroad and plank road taxes.

1858—life insurance companies' license fees or taxes.

1866—tax on national banks (*Law of April 8, 1865.*)

1872—fire insurance companies' fees and taxes.

1880—interest due on School Fund income. (*Revised Statutes* 1878, Sec. 247.)

1880—annual levy for the State University. (*Revised Statutes* 1878, Sec. 390.)

1881—interest on certificates of indebtedness. These certificates had been given to the trust funds in exchange for bonds of the State. (*Revised Statutes* 1878, Sec. 260.)

1881—tax for maintenance of Industrial School for boys.

1885—license taxes on telephone, railroad car, hail insurance and accident insurance companies.

1891—tax on savings and loan, and trust companies.

1891—tax on log driving and boom companies.

1893—tax on sleeping car companies.

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[31] *Secretary of State's Report*, 1865, 80; 1872, 5.

* A list of the funds now obtaining will be found at the end of this chapter.

1896—the State's share of taxes on Street Railway and Electric Lighting Companies.

1899—license taxes on surety, marine, and casualty insurance companies.

1900—license taxes on express companies and freight line companies.

1900—tax on legacies.

1903—vessel tonnage tax (has been abolished).

Other sources are the tax for the support of inmates of state charitable institutions, office fees and miscellaneous sources. Still another source is the one dollar tax on civil suits begun in the circuit courts. The purpose of this tax is to pay in part the salaries of the judges. When the fund system was adopted there was a separate judiciary fund, but it was early merged with the general fund. Because of the failure of clerks of courts to make returns the receipts from the suit tax have never been as large as they should have been.

b. The School Fund.

This fund was created by the sale of lands granted by Congress for common schools. Other sources are the five per cent grant of the net proceeds of federal lands sold in the state, and fines collected in the various counties for breaches of the penal laws. The latter source has not been as lucrative as it should have been because many county and town officers have failed to obey the Constitution in regard to paying into the state treasury these fines. In the first three years of the state's existence, only seven out of twenty-nine counties paid in anything at all. The record for recent years is no more satisfactory. As has been indicated elsewhere, the Federal Government withholds $101,262.33 of the five per cent fund because of Wisconsin's responsibility in the matter of the Milwaukee and Rock River Canal. Since 1866 a tax of $7,088.66 has been levied to offset this loss to the school fund. In 1850 Congress granted to the state all the swamp and overflowed lands within its borders, seventy-five per cent of the net proceeds of the sale of which was dedicated to the support of schools. In 1865 this source was cut off by the abolition of the swamp land fund. Instead it was provided that twenty-five per cent of the annual

income of the Normal School Fund should be paid into the School Fund until the latter should amount to $200,000. Still other sources are the five per cent penalty for the non-payment when due of interest on school land certificates and loans from the School Fund, moneys accruing from forfeiture or escheat and from trespass penalties having reference to school lands. At the time of the Civil War, money paid for exemptions from military duty went into this fund. In 1901 the legislature attempted to create a new source by providing that persons, companies, or corporations cutting ice from meandered lakes in Wisconsin and shipping it out of the state should pay a license fee of ten cents a ton and that the proceeds of this tax or fee charge should go into the common school fund. The question of the validity of this law came before the Supreme Court of the State the next year in the case of *Rossmiller vs. the State.* The Court held the law to be in contravention of the fourteenth amendment to the Constitution of the United States guaranteeing to all persons within the jurisdiction of a state equal protection of the laws. A state has no right to appropriate ice formed on waters within its borders. The extent of its interference with such ice cannot exceed what may be necessary to the insuring to all a common enjoyment of such ice. The state can exercise only police power over such waters. Accordingly the law was repealed in 1903.[32]

c. The University Fund.

The University Fund arises from the sale of university lands and the five per cent penalty for non-payment when due of interest on university land certificates and loans from the University Fund. The Agricultural College Fund consists of the proceeds of the sales of the 240,000 acre grant for the support of an institution in which the science and practice of agriculture shall be taught.

d. The Normal School Fund.

In 1857 it was enacted that twenty-five per cent of the net proceeds of the sale of swamp and overflowed lands should go into a Normal School Fund. (*General Laws*, 1857, ch. 82.) A law of 1859 provided that the Normal School Regents should

[32] *Laws of 1901*, ch. 470; *Laws of 1903*, ch. 11; *114 Wisconsin*, 169.

distribute the income of the fund among the following institutions which maintained or should establish and maintain a normal department; colleges, universities and girls' seminaries, owning a certain amount of property, and union or high schools. In 1889 it was provided that the Normal School Fund should receive one-half of the income from the sale of swamp and overflowed lands and lands granted in lieu of such lands. (*Laws of 1889*, ch. 340.)

e. The Swamp Land Fund.

This was created in 1856 and arose from the sale of lands granted to the state by an Act of Congress approved September 28, 1850, entitled "an act to enable the state of Arkansas and other States to reclaim swamp and overflowed lands within their limits." The state dedicated seventy-five per cent of the proceeds of the sale of these lands to schools; and in 1857, twenty-five per cent, to the normal schools. (ch. 82.) In 1865 it was enacted that one-half should go to the Normal School Fund and one-half to the Drainage Fund. (*Laws of 1865*, ch. 537); in 1889 the same disposition was made of the proceeds derived and to be derived from the sale of lands granted in lieu of swamp and overflowed lands. Prior to the Swamp Land Grant Congress had issued warrants to soldiers of the Mexican War to locate on any public lands and as some of these locations had been made on Wisconsin swamp or overflowed lands, the two acts were in conflict. In 1855 therefore Congress made an adjustment of the difficulty through an act entitled "an act for the relief of purchasers or locators of swamp and overflowed lands." (*Laws of 1889*, ch. 340.)

f. The Drainage Fund.

Prior to 1865, this fund received twenty-five per cent of the proceeds of the sales of swamp and overflowed lands; after that year, fifty per cent.

g. The Whitewater Normal School Building Fund.

$25,000 was given by Whitewater for a normal school building at that place and $18,000 was appropriated from the Normal School Fund. (*Laws of 1866, 1867.*)

h. The Platteville Normal School Building Fund.

$15,000 was appropriated from the Normal School Fund for the completion of the normal school buildings at Platteville.

i. The Oshkosh Normal School Building Fund.

In 1869, the city of Oshkosh gave $30,000 for a normal school building.

j. The Capitol Fund.

This fund arose from the sale in 1857 of the ten sections of land granted to the state by Congress for the completion of public buildings. In 1860 this fund was merged with the general fund.

k. The War Fund.

The War Fund arose from the sale of War bonds and from appropriations for war purposes.* In 1868 this fund was closed and covered into the general fund.

l. The State Insurance Fund.

In 1903 Wisconsin made provision for insuring its buildings itself. The state buildings are insured at ninety per cent of their value and at the average rate charged by reliable companies. Sixty per cent of the premiums so determined is covered into the insurance fund. (*Laws of 1903,* ch. 68.)

m. The Railroad Farm Mortgage Fund.

A law of 1862 provided that every railroad company that had taken payment for any or all of its capital stock or bonds in notes or bonds secured by mortgages on the real estate of the purchasers and had sold, hypothecated or otherwise disposed of such notes or bonds for the purpose of securing money for the payment of its debts should pay annually into the Railroad Farm Mortgage Fund twelve per cent of the amount of such mortgages and should continue to make such payments until the amount of the mortgages with interest at six per cent had been paid. The liens upon the fund were not to exceed the amount that the bona-fide holders of the stock or bonds had paid for them. It was provided that certain railway bonds should have a lien of ninety per cent; others of seventy; still others, of fifty. No railroad, however, was obliged to make the above described payments unless it had assented to the law providing for the fund. (*Laws of 1862,* ch. 330.)

There have been several other funds in addition to those de-

* Vide Chapter on Public Debt and State Credit.

scribed above. Some of these are found in the following list of funds now obtaining:

1. The General Fund.
2. The School Fund.
3. The University Fund.
4. The Agricultural College Fund.
5. The Normal School Fund.
6. The Drainage Fund.
7. Delinquent Tax Fund. (This arises from taxes collected on state lands.)
8. Indemnity Swamp Land Fund.
   This arose from the conflict between the Swamp Land grant and the grant to the soldiers of the Mexican War.
9. The Calumet and Manitowoc Counties' Idemnity Fund.
10. The Redemption Fund.
    Money for the redemption of forfeited state lands is paid into this fund.
11. The Deposit Fund.
    Into this fund go surpluses from the resale of forfeited state lands over and above the amount owed the state, interest, costs and penalty.
12. The Menominee Indian Reservation Trespass Fund.
13. The Allotment Fund.
    General Laws, 1862, Sec. 3, ch. 190, reads,
    "The State Treasurer is hereby authorized and directed to receive such sums of money as may be placed in his hands by a volunteer making an allotment and shall dispose of the same according to the order and direction of such volunteer."
14. The Medical Examiner's Fund.
15. The State Insurance Fund.
16. The Memorial Hall Fund.
17. The Hunting License Fund.
18. The Inspection of Oils Fund.
19. Forest Reserve Fund.

CHAPTER VII

THE GENERAL PROPERTY TAX

I. The General Property Tax in the Territorial Period, 1836 to 1848

The Act providing for the organization of the Territory of Wisconsin placed two specific limitations upon the taxing power of the Territorial Legislature. No tax was to be imposed upon the property of the United States. The lands or other property of non-residents were not to be taxed at a higher rate than the lands or other property of residents. Of course, any tax legislation, just as any other legislation, was null and void if disapproved by Congress.

The first law providing for a Territorial revenue was enacted in 1838. It provided that the counties should retain from the taxes collectable each year five per cent thereof to be taken from the first moneys received. This five per cent was to be kept by the county treasurers and paid out on drafts issued by the Territorial Treasurer.[1] The tax due for 1838 was remitted in 1839.[2] In 1843 it was provided that there should be levied in the several counties and towns a tax of such a percentage as the Legislature might from year to year prescribe. The tax for the year 1843 was to be three-eighths of one mill in the counties of Milwaukee, Racine, Jefferson, and Crawford, and five-eighths of one mill in all the other counties. Taxes were to be paid in gold or silver coin or in warrants drawn by the auditor on the treasurer of the Territory.[3] Through an oversight, however, the bill of

[1] *Laws of 1838*, No. 93.
[2] *Laws of 1839*, No. 14.
[3] *Laws of 1842-43*, 65.

1843 was left without an enacting clause; when it came up the next year it failed to pass, and it never became a law.[4] In 1845 a law was enacted providing for a tax of one and one-half mills on the true cash value of land, exclusive of improvements either in buildings or otherwise, and also of all merchandise or stock actually paid into any incorporated company. County scrip was not to be received in payment of the Territorial tax, but evidences of Territorial indebtedness, except such as related to the Milwaukee and Rock River Canal, were to be received.[5] The chief purpose of this tax was to provide for the paying off of the Territorial debt. The significant feature of the tax is that it taxed land exclusive of improvements. It will be seen, however, that such a feature was common in the county taxation.

The laws bearing on county taxation were both general and specific. A law of 1837 provided that all lands, town lots and outlots with their improvements, and personal property with certain exceptions should be taxed. An amendment of 1839 exempted improvements in buildings and otherwise. In 1841 merchandise and stock actually paid into any incorporated company, goods, wares and merchandise were declared taxable. By the same law, moneys, goods, chattels, chattels real, credits over and above debts, public and corporation stocks, and shares in steam or other boats were made taxable in the counties of Milwaukee, Racine, Crawford, and Jefferson. The year before it had been enacted that all real and personal property in Crawford and St. Croix counties, whether belonging to individuals or corporations should be taxed, except that property exempted by law from execution should not be levied upon and debts should be subtracted from the value of personal property. A law of 1845 provided for the taxation in Portage and Walworth counties of improvements on lands and also of personal property, which was declared to include moneys, goods, chattels, chattels real, debts due from solvent debtors in excess of debts owed, public and corporate stocks, and shares in steamboats or other vessels. A law of 1847 extended the law of 1845 to apply to Dodge county and another law of the same year made it applicable to

[4] Strong, Moses M., *History of Wisconsin Territory.* (Madison, 1885), 415.
[5] *Laws of 1845*, 1.

the township of Sun Prairie in Dane County, and a law of 1848 made a further extension to Rock County.[6]

As might be supposed, the rate of local taxation was restricted by law.[*] The law of 1837 placed the limit of county taxation at five mills; in 1839 it was made ten mills; and in 1845 the limitations were made ten and one-half mills for general expenses and two and one-half mills for schools. The law of 1839 compelled counties to levy a school tax of one-fourth of one per cent. In 1840 the levying of a school tax was made optional with the counties, and in 1843 it was provided that if a county failed to levy a school tax, the districts in the county might do so, but only for the payment of teachers. Many special laws were enacted authorizing districts to levy taxes to raise funds for the erection of school buildings.[7]

The organic act exempted from taxation the property of the United States. The Territorial law of 1837 providing for county taxation declared exempt household furniture to the amount of $75, libraries, tools of mechanics, and agricultural implements.[8] Various other laws exempted the property of incorporated literary, benevolent, charitable and scientific societies, public libraries, school houses, houses of public workship, academies and seminaries and the land on which such buildings stood. The absence of any limitation on the amount of land to be exempted is indicative of the newness of the country and of lack of caution and foresight on the part of the legislators.

The provisions respecting delinquent taxes were as follows. Delinquent taxes were collectable by distress and sale of goods and chattels and if no chattels could be found, by the sale of the land taxed. Lands sold for taxes could be redeemed at any

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[6] *Laws of 1837-38*, No. 68; *revised statutes*, 1839, 44; *Laws of 1840-41*, No. 4; *Laws of 1839-46* No. 53; *Laws of 1845*, 36; *Laws of 1847*, 48, 125; *Laws of 1848*, 127.

[*] Bridge taxes were limited to three-fourths of one per cent on real and personal property; town taxes were limited to one-half of one per cent on real property; town taxes were limited to one-fourth of one per cent on personal property. *Laws of 1836*, No. 13, also p. 67; village taxes in Milwaukee were limited to one-half of one per cent on real and personal property. *Laws of 1837*, No. 56.

[7] *Laws of 1837*, No. 68, sec. 2; *revised statutes*, 1839, 44; *Laws of 1845*, sec. 11, p. 3; *Laws of 1839-40*, No. 57; *Laws of 1840-41*, No. 1; *Laws of 1843-44*, 40.

[8] *Laws of 1837*, No. 68, sec. 1.

time within two years after their sale, by paying to the purchaser, his heirs or assigns the purchase price with interest at thirty per cent, also the taxes, costs and charges that had been paid by the purchaser, his heirs or assigns. Lands of idiots, insane persons, and married women could be redeemed at any time within five years after their sale for unpaid taxes. Lands of minors were redeemable when such persons became of age and for one year thereafter.[9]

It has been noted that the organic act forbade the taxation of the property of non-residents at a higher rate than the property of residents. Notwithstanding this prohibition in the organic law of the Territory, Governor Dodge in 1838 recommended a tax on the property of non-residents for the purpose of raising money for public schools. He held that the taxing powers of the legislature should be construed liberally and in a way conducing most to the welfare of the people of the Territory. What, he asked, could conduce more their welfare than a system of public schools? His argument is rather amusing and yet he was able to point out that the organic act strictly interpreted had perhaps already been violated, for the exemption of improvements on lands was equivalent in a way to a higher tax on the property of non-residents, since unimproved lands, which did not profit by the exemption, were owned for the most part by persons outside of the Territory.[10]

Only one of the Territorial governors, James D. Doty, assailed

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[9] *Revised Statutes*, 1839, 44.

In addition to property taxes the counties were authorized to levy license or business taxes. In 1836, the first year of the Territory's existence, county supervisors were authorized to impose an annual license tax of $108 on groceries, "victualizing houses and ordinaries with permission to sell spirituous liquors and wines by the small measure." The next year the counties were authorized and directed to levy the following license taxes:

1. for keeping a tavern, an annual tax of not less than $5.00 nor more than $50.00;

2. for retailing spirituous liquors, beer, ale, cider, to be drunk on the premises, or for retailing groceries, an annual tax of not less than $100;

3. for selling merchandise, an annual tax of not less than $10.00 nor more than $50.00;

4. for hawking wooden or brass clocks, an annual tax of not less than $100 nor more than $300;

5. for running a ferry, an annual tax of not less than $5.00 nor more than $20.00.

[10] *Journal of the House*, 1838, 7.

the tax system of the Territory. In his message of 1841, Governor Doty declared that the system of taxation obtaining was regarded throughout the Territory as, "unequal, illegal, and highly oppressive." Large sums were collected as taxes, but few improvements were made. The people complained of being burdened with heavy taxes without receiving any apparent benefits from the government. The tax system operated to confiscate the property of bona-fide settlers and to transfer it to tax certificate speculators. The Governor recommended that the Territory purchase all lands sold for taxes. He saw no necessity for such high taxes as were being levied for county purposes. He attributed them to the protracted sessions of the courts, the great number of county and township officers, their high pay and the great number of days that they were employed. Governor Doty recommended that the duties of the county commissioners and their clerks be performed by the justices of the peace, that assessments be made by the registers of deeds and that the taxes be collected by the sheriffs. It was pointed out that in new communities such duties were usually discharged without compensation. The Governor complained that instead of the honor of an office's being regarded as its reward, the pernicious notion prevailed that offices were created to put money into the pockets of the holders. The Governor held that taxation of lands irrespective of improvements worked a violation of the provisions of the Ordinance of 1787 and of the act for the organization of the Territory that the lands or other property of non-residents should not be taxed higher than the lands or other property of residents. This violation was worked, he affirmed, because wild lands were owned for the most part by non-residents. He complained that such lands were never assessed at less than $2.50 and sometimes at $7 and $8 an acre. He protested against the selling of land for unpaid taxes, asking, "Shall a farm of 80 acres be sold to satisfy a tax of $2?" In some counties, it was complained by His Excellency, nine-tenths of the settlers occupied United States lands and consequently were exempt or practically exempt from taxation, while the other tenth bore the whole burden of the cost of government. He questioned the right of the legislature to provide that land sold for taxes

could not be redeemed after three years. His general conclusion was that the whole system of taxation was especially favorable to tax-title speculators. Two years later he declared that complaints of heavy taxation continued, and he recommended a reduction in the number and amount of the taxes.[11]

Governor Doty's attack on the system of taxation was so vigorous that the matter was referred to the Judiciary Committee of the Council. In a majority report, the committee upheld the system. Apropos of excessive taxation asserted by the Governor, the committee pointed out that the amount of taxes was determined by the people themselves through their local officers. The committee was non-committal on the question as to whether taxes were too high, but was of the opinion that as long as the officers who determined the amount of taxes and also to a great extent the amount of county expenses were elected by the people, there could be no great danger of over-taxation. The exemption of improvements on land, an exemption that affected only about half of the population of the Territory, was justified on the ground of social expediency, since it served as an encouragement to the cultivation of the soil. The committee averred that the taxation of lands irrespective of improvements did not violate the provision of the Ordinance of 1787 and of the Organic Law of the Territory that the lands or other property of non-residents be not taxed higher than the lands or other property of residents.* The Territory was bound merely to tax all property of the same kind in the same way irrespective of whether the owners were residents or non-residents. Here was involved the familiar question of the right and limits of the power to classify property for purposes of taxation.[12] The reasoning of the committee was sound; there was a burden lying upon the opponents of the exemption of improvements on land of proving an intentional discrimination against non-residents. This point, however, the committee did not appreciate. It merely declared the right to classify.

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[11] *Journal of the House*, 1841, 21-24; ibid., 1843-44, 6.

*The Ordinance of 1787 provided that non-resident proprietors should not be taxed higher than resident proprietors.

[12] *Journal of the Council*, 1841-42, 635-50.

The *Wisconsin Enquirer* in a vigorous editorial attack on Governor Doty asserted that his solicitude regarding taxes was due to his connection with speculators in public lands. The editor of the *Enquirer* maintained also that the transference of the duties of the county commissioners to the justice of the peace, the duties of the assessors to the registers of deeds, and the duties of the tax collectors to the sheriffs would strike a blow at popular government and would give the Governor complete and unlimited control in the Territory, since functions theretofore discharged by elected officers would have been transferred to officers appointed by the Governor, who was declared to be a Whig attempting to parade in the garb of Democracy.[18] Whether this charge be true or not, Governor Doty was a politician and there is some evidence that he had connections that might make doubtful the validity of his claim of being a friend of the people. However that may be, there can be no doubt that the burden of taxation was sufficiently great to postpone statehood for several years after it was legally possible, as the people felt unable or unwilling to pay the additional taxes that would come with a change of political status.

The most characteristic feature of taxation in Wisconsin Territory was the effort to adapt taxation to different local conditions. The exemption of improvements is also well worthy of notice, an exemption that both worked a discrimination against non-settlers and tended to encourage improvements. The somewhat extensive employment of license taxes in addition to the general property tax should be noted. In general debts were exempt by subtraction from credits. In two counties, debts could be subtracted from all personal property. Taxation in Wisconsin Territory presented all the lack of uniformity and all the simplicity that one might expect to find in a new and almost, if not entirely, agricultural community.*

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[18] *Wisconsin Enquirer,* Dec. 20, 1841.

* Closely connected with differences in methods of taxation in different counties is the form of local government. When the Territory was organized southern people were very numerous in the lead district and consequently in 1837 the county commissioner system of government was adopted. Under the authority of Michigan the government had been nominally of the township type, but only nominally. In 1838 towns were organized for judicial and

II. The General Property Tax in the State of Wisconsin

A. INTRODUCTORY

If much legislation on taxation would insure a perfect system, Wisconsin's system would be a marvel of perfection. The history of taxation in this state is made complicated and obscure by a multiplicity of legislative acts and amendments and by a great number of court decisions,* in themselves confusing because of the confusion with which they were obliged to deal. The Tax Commissioners appointed by the Governor in 1867 to codify the tax laws and to suggest reforms found no end of confusion in the laws. Every legislature since the publication of the Revised Statutes of 1858 had altered or amended the laws relating to taxation. In several instances, numerous and important alterations and additions had been made with the result that many provisions were inconsistent with one another. When a new law was enacted it was simply declared that "all laws inconsistent with or contravening the provisions of this act are hereby repealed," and in many cases the commissioners found it difficult if not impossible to determine precisely what was inconsistent with the new law. It was pointed out also that defects in the drafts of amendments, or of reference or repealing clauses produced uncertainty, confusion, and misconstruction in many localities. Frequent change in the laws worked against efficient administration. Besides, the commissioners averred, the legislators were given to piling blunder upon blunder in their attempts to improve the system of taxation.[14] The Supreme Court of the state has in some cases met with great difficulty in

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police purposes and given power to provide for roads. A great influx of people from New York State, especially into the eastern counties, led to the adoption of an act giving counties local option as to government and providing for an election to decide the matter (1841). When Wisconsin was admitted into the Union, in 1848, only five counties, Grant, Green, La Fayette, Iowa, and Sauk, still clung to the commissioner system. *Report of Wisconsin Tax Commission of 1898*, 17.

* Up to 1897 there had been 914 decisions. *Report of Wisconsin Tax Commission*, 1898, 25.

[14] *Report of Tax Commissioners of 1867*, 3, 10.

its attempt to reach sound conclusions through the maze of legislation and litigation having to do with taxation. In 1865 the Court said that it would probably be impossible to place any construction on the assessment laws that would not be repugnant to some of its provisions.[15]

New York has served as a model to a considerable extent for Wisconsin tax legislation, as well as for other legislation. In the convention that framed the Constitution for the state, twenty-five of the fifty-six members were from New York.[16] Nearly all of the provisions of the first state tax law, the law of 1849, relating to "Property to be Taxed." "Duties of Assessors," "Equalization of Assessments," and "Collection and Return of Taxes" were taken with but slight alterations from the New York Statutes. Many of the provisions of the New York Statutes of 1829 are found in almost the same words in the Wisconsin Statutes of 1849 and also of 1898, and yet the system obtaining in Wisconsin in 1898 was unique in many of its features.[17]

A significant and important recent development in Wisconsin taxation is the movement toward centralized control. In 1901 the State Tax Commission was given general supervision of the system of taxation throughout the state, general supervision of all assessors and boards of review.[18] A law of 1905 provides that the State Tax Commissioners whenever a complaint is made and they are satisfied from a summary hearing that the assessment of property in any assessment district has not been in substantial compliance with law and that the public interest would be promoted by a re-assessment, may appoint and authorize one or more persons to make such re-assesment. Local and county officers are required by the law to render all necessary assistance to these state assessors. The expenses of re-assessment are to be paid by the state and charged to the district. Any person appointed under this law who willfully neglects or refuses to perform his duty shall forfeit to the state not less than $50 nor more than $250.[19] An-

[15] 24 *Wisconsin*, 303.

[16] 25 members were born in New York; 24, in New England; 7, in foreign countries.

[17] *Report of Wisconsin Tax Commission*, 1898, 11, 22.

[18] *Laws of 1901*, ch. 220.

[19] *Laws of 1905*, ch. 259.

other law of the same year provides that upon the appeal of any town, city, or village in a county from the apportionment of taxes by the county board, the state board, which is the tax commission, may review and re-determine the value of the property in the county. If inequality is found it shall be corrected in the next tax levy. The expense of the work shall be borne by the county.[20] This law repealed the special commissioners law of 1880 which provided that when the mayor or common council of any city, the president and board of trustees of any village or the supervisors of any town deemed that the property in such city, village, or town had been unjustly valued in the making of the county apportionment of taxes, they might procure the appointment, by the judge of the circuit in which their county was situated, of three commissioners, not owners of real estate in that county, to bring about a just relation between all the valuations of real estate in the county. The valuations determined by the commissioners were to be final and conclusive and in the assessment of the next year, towns, villages or cities, overtaxed the preceding year were to be credited with the excess and vice-versa. The expenses and compensation of $4 each per day of the commissioners were to be paid by the county, but if the findings of the commissioners were adverse to the city or towns, that procured their appointment, that city or town was to reimburse the county. An amendment of 1889 provided that if the decision was favorable to the local body that had procured the appointment, the expense was to be apportioned by the county among the towns etc., the valuations of which had been raised and in proportion thereto. An amendment of 1901 put the charge on the rest of the county.[21]

The special commissioners law was objected to on the ground that such a commission interfered unduly with local government and violated the rights of local self-government. The State Supreme Court, however, in the case of the *State of Wisconsin ex rel. Brown County vs. Myers, Judge etc.*, which was tried in 1881, upheld the law, declaring that the whole matter of assessing and valuing property for taxation is under the con-

[20] *Laws of 1905*, ch. 474.
[21] *Laws of 1880*, ch. 291; *Laws of 1889*, ch. 201.

trol of the legislature and that local assessments might be made by a State Board, if the legislature should so direct.[22] Twenty years later in the case of the *State ex rel. Ellis vs. Thorne,* the Court reiterated and sustained the decision of 1881.[23] These decisions are of very great importance, since in so far as the law and the constitution are concerned they make the way clear to a greatly needed reform in taxation administration. The law of 1901 and the two laws of 1905 noted above mark a significant advance in the direction of this reform. Wisconsin as well as every other state has had an unfortunate experience with elected assessors.* Perhaps the time is not far distant when this progressive state will have the property of its citizens assessed by officers who will give all of their time to the work, who will be appointed by the State Board under civil service rules and who will not be hampered in the dischage of their duties by any dependence, political or otherwise, upon the persons whose property they will assess for taxation.

B. PROPERTY TAXED AND PROPERTY EXEMPTED

In his first message, the first Governor of the State criticized in no uncertain terms the Territorial system of taxation then still in force. Governor Dewey based his criticism very clearly upon the benefit theory of taxation. He pointed out what has already been noticed, that in some counties real estate irrespective of improvements, merchandise and stock in incorporated

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[22] *52* Wisconsin, 628.

[23] *112 Wisconsin,* 81.

* The situation with respect to assessments in the city of Fond du Lac is an interesting commentary on elected assessors. Two of the assessors are fire insurance agents; the third is the father-in-law of one of the others. Notwithstanding the disgraceful, outrageous way in which these assessors have administered their offices, they have been assessors for a number of years and it is said that they cannot be beaten at the polls. Prominent and substantial citizens have told the writer that persons who insure their property with a company represented by the assessors get a low assessment; those who do not are assessed high. These assessors use their public office to coerce people into giving them business; they violate the laws of the State and deal unjustly with its citizens in order to promote their own private ends, and yet they are elected by the people. Since this was written these assessors have been defeated at the polls.

companies were alone taxed; while in others, improvements on real estate and personal property were taxed also. He might have noted further that in five counties, Washington, Portage, Rock, Calumet and Dodge, only real estate was assessed.[24] The Governor maintained that such a system was unjust, as it did not bear equally on all branches of industry and he proceeded to declare that the system was in violation of the true principle of taxation in republican governments, namely, that since the government extends equal protection to all property, all property both real and personal should be taxed "in the same ratio" according to its value. Taxes were the support rendered to the state in return for the protection that it afforded and were equivalent to that protection.[25] It is interesting to contrast this view of 1848 with a view expressed in 1898 in the following words, "The general property tax [by which much the greater part of public revenues is obtained] as a system is based upon the principle that the individual citizen should contribute to the support of government in proportion to his *ability*, measured by his property."[26]

The first state tax law, approved August, 1848, provided for a tax of four and one-half mills on the dollar valuation of all lands, not exempt by the laws of the United State or of the state, irrespective of improvements in buildings or otherwise, and of all merchandise and of stock actually paid into any incorporated company. Gold, silver and auditor's warrants were alone to be received in payment of these state taxes.[27]

The next year there was enacted a new law, which provided in great detail for the assessment and taxation of property in the state. This law taxed all real and personal property not legally exempted. Real property was defined as including land, buildings, fixtures, improvements on land, and all mines, minerals, quarries and fossils in and under the same. Personal property* was declared to include all goods and chattels, moneys and effects, all boats and vessels whether at home or

[24] *Secretary of State's Report*, 1848.
[25] *Governor's Message*, 1848, 5-6.
[26] *Tax Commission Report*, 1898, 28.
[27] *Laws of 1848*, 47.
* Options on State lands were taxed as personal property.

abroad, and all capital invested therein, all debts due or to become due from solvent debtors, whether on account, contract, note, mortgage, or otherwise, all public stocks or stocks of incorporated companies† and such part of the capital of incorporated companies, liable to taxation on their capital, as was not invested in real estate.[28] The state tax for 1849 was payable in gold or silver, but an amendment of that year provided that evidences of state indebtedness could be received from county treasurers in payment of state taxes.[29] Ten years later the words "gold and silver" were struck from the tax laws.[30] The property of bridge, turn-pike, plank road and railroad companies was taxable locally and companies taxed on their property were not liable to taxation on their capital.[31] By a law of 1859 personal property was defined as including every tangible thing that is a subject of ownership and does not form any parcel of real property. Tax certificates, judgments, notes, bonds, mortgages, all other evidences of debt secured by a lien on real estate, capital stock, undivided profits and "all other means not forming capital stock," shares or an interest in boats, ships, and vessels within or without the State were enumerated as personal property. In 1893 it was provided that leaf tobacco either in the hands of the grower or dealer be taxed where located on the first of May unless it were actually in transit. A law of 1899 added to the category, personal property, ice cut and stored for shipment.[32] By an Act of 1865 improvements on lands entered or to be entered under the Homestead Act, approved May 20, 1862, were made taxable as personal property.[33]

† No person was required to include in his list of personal property a part of the capital of any company or corporation that was by law exempt from taxation or that was required to list its capital and other personal property as a company or corporation, nor any part of the capital stock of any company or corporation that was required to pay taxes on its capital, profits or dividends. Corporations were taxable on stock and personal estate unless otherwise provided.

[28] This Act approved Mar. 29, 1849 is to be found in pamphlet form. The pamphlet is labeled "*Acts Relative to Taxes, 1849.*" Vide also: *Revised Statutes*, 1849, ch. 15.

[29] *Laws of 1849*, ch. 125.

[30] *Laws of 1859*, ch. 124.

[31] *Revised Statutes*, 1849, ch. 15, sec. 8.

[32] *Laws of 1859*, ch. 167, sec. 2; *Laws of 1893*, ch. 180; *Laws of 1899*, ch. 346.

[33] *Laws of 1865*, ch. 538, sec. 53.

From 1895 to 1905 boats, vessels, etc., were subject to special taxes.[34]

The law of 1849 exempted all property of the United States and of the state, the public property of the several counties, cities, villages, towns and school districts used or intended to be used for corporate purposes, except lands bid off for counties at tax sales,* the personal property of all literary, benevolent, charitable and scientific institutions incorporated in the state—in 1852 of all such institutions within the state—and such real estate as is actually used for the purposes for which they were incorporated, the property of religious bodies, when used exclusively for religious or school purposes, burial grounds and tombs, public libraries and all property belonging to or connected with them, the property of Indians who are not citizens, except lands purchased by them, personal property exempted by law from execution, not exceeding in value $200.[35] There was an exemption also of the personal property of persons who, because of infirmity, age or poverty, might in the opinion of the assessors be unable to contribute toward the public charges. The owners of shares in companies taxed on their capital were not taxed on such shares.

In 1857 the property real and personal of agricultural societies organized in accordance with the laws providing for such organizations was declared exempt. Two years later the amount of land belonging to scientific, literary, or benevolent institutions to be exempt was limited to forty acres, but several special acts exempted large tracts for a certain period of time. In 1862 for example all of the real estate of Lawrence University, not exceeding 10,000 acres nor 2,000 in any one county, was exempted for five years. The property of such institutions when

[34] *Laws of 1895*, ch. 283; *Laws of 1901*, ch. 192; *Laws of 1905*, ch. 487.

A tax of 3 cents per net ton, to be divided between the state and the county in which is situated the "port of hail."

* Later such lands were exempt after they had been held by a county for two successive years. *Laws of 1869*, ch. 166.

[35] *Revised Statutes*, 1849, 138, 139; *Laws of 1852*, ch. 293.

In 1887 the endowment funds and the real and personal property of public library associations organized under the laws of the state, which, or the income from which, is used or invested for the purposes for which such associations are organized were made exempt. *Laws of 1887*, ch. 465.

it is leased is to be taxed unless it be land granted by Congress for religious or educational purposes. In 1878 the forty acre limit was reduced to ten acres. Parsonages whether occupied by the pastor or rented for his benefit were exempted. The law of 1859 exempted provisions and fuel necessary to maintain the family for six months, also wearing apparel and family pictures, and family libraries not exceeding in value $100. Each and every person was declared to be entitled to exemption on personal property, excepting moneys and credits, horses, cows, etc., to an amount not exceeding $100. A law of 1861 made the exceptions, money and credits, horses, pleasure carriages, gold and silver, watches, piano fortes and melodeons. In 1865 state bonds not on deposit with the comptroller were exempted, state bonds, however, that insurance companies should refuse to deliver at par to the state on January 1, 1870, were to be taxed.[36] The law of 1859 exempted also pensions from the United States or from any state and salaries or payments to be received for labor or services, which incomes might otherwise be classed among credits. Growing crops were exempted also.

A law of 1866 exempted members of volunteer fire companies belonging to the State Firemen's Association from paying the poll tax and exempted also their real or personal property or both to the amount of $500. Three years later it was provided that this property exemption was not to be granted in cases in which the fireman was paid by his city or village.[37]

Lands granted, by an Act of Congress approved June 3, 1856, to Wisconsin to aid in railway promotion were exempt from taxation for various periods while they were being held by railroad companies. The land of the Tomah and Lake St. Croix Railroad Company was in 1864 exempted for ten years. In 1866 a general exemption of such land until June 3, 1871, was declared. By a law of 1867 the lands granted to Wisconsin by Congress for a military road from Wausau in Marathon County to Lake Superior were exempted for five years after they should have been patented or for so much time as they remained in the

[36] *General Laws*, 1857, ch. 45; ibid., 1859, ch. 167; ibid., 1861, ch. 91; ibid., 1862, ch. 267; ibid., 1865, ch. 320, secs. 12, 13; *Revised Statutes*, 1878, ch. 48, sec. 1038, art. 3.

[37] *Private and Local Laws*, 1866, ch. 484, sec. 7; *General Laws*, 1869, ch. 165.

possession of the persons who had received them for building the road. A law of 1897 exempts from taxation armories owned by regiments, battalions or companies of the Wisconsin National Guard, but they are subject to special assessments.[38]

In 1868 a law was enacted exempting the property of insurance companies organized in the state and the property of railway companies. The tracks, right-of-way, depot grounds and buildings, machine shops, rolling stock and all other property of railroads necessary to their operation were declared to be forever exempt from taxation. Such railroad property is, however, to remain liable to special assessments for local improvements within cities and villages, and the land owned or claimed by railroads and not adjoining their tracks remains taxable. This law of 1868 simply gave emphasis to the gross receipts tax law of 1854, which exempted the property indicated above. An amendment of 1889 extended the law of 1868 to pontoon or pile and pontoon railroads. The Supreme Court of the State decided in the case of the *Chicago, Milwaukee and St. Paul Railroad Company vs. the City of Milwaukee,* tried in 1895, that the improvement for which an assessment is levied on railroad property must clearly benefit the railroad. In this particular case it was decided that no special benefits such as can justify an assessment accrue to a railroad right-of-way by the improvement of an adjoining street.[39]

As early as 1864 Wisconsin sought by preferential treatment in taxation to encourage the formation of corporations for mining, smelting or manufacturing iron, copper, lead, zinc, silver, or other ores or minerals and for other manufacturing purposes. Every corporation engaged in mining copper was to be taxed $1.00 on every ton of copper mined. Iron mining corporations were taxed ten cents a ton. Coal mining corporations were taxed one-half a cent a ton; corporations mining and manufacturing lead, twenty-five cents a ton. These taxes were in lieu of all other taxes except on property owned by the companies but not used in their business. In lieu of all other taxes, manufacturing corporations are by this law required to pay a tax of one-half of

[38] *General laws,* 1864, ch. 324; ibid., 1866, ch. 73; ibid., 1867, ch. 5; *Laws of 1897,* ch. 380 sec. 1038, par. 21.

[39] *Laws of 1868,* ch. 130, secs. 13, 14; *Laws of 1889,* ch. 285; 89 *Wisconsin,* 506.

one per cent on the amount of capital stock paid up and on money borrowed, which for purposes of taxation is considered as capital stock. In 1883 the property of corporations or associations organized under the laws of the state used exclusively for the purpose of manufacturing oxide of zinc or metallic zinc from the native ores of the state was made exempt for three years. By a law of 1897 factories for the manufacture and refining of beet sugar and all real and personal property used in connection with the process were exempted for five years from all taxes except special assessments for local improvements.[40]

A law of 1893 exempts wagons with tires three inches wide or more owned by farmers and used by them in their capacity as such. Two years later sleighs having a gauge of four feet six inches were made exempt.[41]

A return will now be made to the exemption of personal property in general. An amendment of 1891 declared exempt wearing apparel, libraries, family portraits, kitchen furniture, growing crops and $200 worth of household furniture and other personal property. In 1893 the law was again changed. Wearing apparel, family portraits and private libraries not exceeding in value $200 were made exempt, also kitchen and other household furniture not exceeding in value $200. An amendment of 1903 exempts one piano, organ or melodeon or other musical instrument provided that the value of the same added to the value of the kitchen or other household furniture does not exceed $200. Another law of 1903 makes the following specific exemptions:

1. The tools of a mechanic used in his trade, and farm and garden tools not exceeding in value in the aggregate $50.
2. One bicycle used by the owner, but no machine propelled in whole or in part by mechanical power.
3. One sewing machine kept for the owner or his family.
4. Firearms kept for the use of the owner, but not exceeding in value $25.
5. Not exceeding five swarms of honey bees kept for the use of the owner and his family.
6. Poultry not exceeding in value $25.

[40] *Laws of 1864*, ch. 166, Secs. 20, 21; ibid., ch. 394; *Laws of 1883*, ch. 203; *Laws of 1897*, ch. 158.

[41] *Laws of 1893*, ch. 151; *Laws of 1895*, ch. 270.

7. Farm animals born after the 31st of December next preceding the day of assessment.

8. One watch carried by the owner and not exceeding in value $50.[42]

It has been proposed in Wisconsin to exempt personal property altogether, because a tax on it cannot be successfully administered, while it puts a premium on perjury and it is claimed increases the interest rate and drives capital out of the state. Ex-Governor La Follette has opposed this entire exemption of all personal property, believing that an adequate penalty vigorously enforced for delinquency in assessors, a searching examination of individuals and corporations, and public condemnation and legal punishment of every attempt to evade taxes will make the personal property tax a success. Apropos of the increase of the interest, if it is increased by the personal property tax, he argued that it would be unjust to compel every other tax-payer to pay an additional tax simply for the benefit of the few who borrow, most of whom borrow for the purpose of improving property, extending business operations, or carrying on every-day commercial transactions.[43] Such optimism is refreshing. The personal property tax, however, can have no chance whatever of success under a system of assessment by locally elected assessors. Experience everywhere has proved it. It is even doubtful if a system of inquisition under expert assessors amenable to civil service rules would effect the desired result. Perhaps it would be well to abolish that part of the personal property tax relating to intangibles and to raise the inheritance tax so as to supply the revenue lost by this abolition.*

[42] *Laws of 1891*, ch. 361; *Laws of 1893*, ch. 182; *Laws of 1903*, chs. 292, 246.

[43] *Governor's Message*, 1901, 18.

*Exemptions not noted in the body of this chapter are the following:

The real and personal property of public art galleries or of corporations organized without capital stock for the sole purpose of maintaining, regulating and managing a public art gallery, provided that the gallery is open to the public free of charge at least three days a week. *Laws of 1889*, ch. 319.

Real estate belonging to or held in trust for the State is exempt from special assessments. *Laws of 1901*, ch. 250.

Property of turner societies used for educational purposes is exempt from taxation. *Laws of 1883*, ch. 309.

Land used as a public park or monument ground and belonging to any military organization and not used for gain is exempt from taxation. *Laws of 1885*, ch. 376.

C. THE ADMINISTRATION OF THE GENERAL PROPERTY TAX: EQUALIZATION, EVASION, INEQUALITY, UNDERVALUATION, TAXATION OF CREDITS

The history of the administration of the general property tax in Wisconsin is a history from the very beginning of undervaluation, of evasion, and of inequality. There have been times of spasmodic reform, and at present the system is probably administered better than ever before, but the need of still greater reform and much of it is apparent.

The effect that the practice of undervaluing property has had on the interests of the state in keeping away settlers and deterring capital from finding investment in this state with its high rate of taxation cannot be determined, but it is certain that this practice coupled with local extravagance in government has had a very great effect of this kind.

The assessment law of 1849 trusted too much in the honesty of the taxpayer. Assessors were obliged to accept valuations of personal property that were sworn to by the owners or their agents or attorneys. Valuations of real estate sworn to by the owner and a disinterested freeholder of the same town or ward and of no relation to the owner were final. Trustees, guardians, executors or administrators might indicate by affidavit the personal property in their charge, and they might reduce valuations made by the assessor on real property held by them, by simply filing an affidavit with the assessor. The board of supervisors of each county was empowered to equalize the valuations in the several towns and wards, but they could not reduce the aggregate valuations made by the assessors. State taxes were to be apportioned among the counties according to the value of their taxable property as ascertained by the last returns from the several boards of supervisors. Unoccupied lands the owners of which were unknown were to be assessed without the insertion of the name of any person and were to be sold for unpaid taxes just as other lands.[44]

[44] *Act of 1849*, secs. 7, 85.

Complaints were made in every section of the state of inequality in the proportions of state taxation borne by the different counties and also of inequality as among individuals. Though these complaints were exaggerations in some cases they were far from being unfounded. The rapid change of land values made the problem of equal taxation more difficult in Wisconsin than in older states where values changed slowly. The notorious inadequacy of the laws for the perfection of tax titles, i. e. titles to land sold for taxes, allowed many property owners, mostly non-residents, to escape taxation for years. Consequently, in some counties the whole burden of taxation was thrown on less than one-half of the property holders. The practice of undervaluation* worked further inequality. The Constitution provided that the rule of taxation shall be uniform and the statutes that all property should be taxed at its full cash value, but in 1852 there was no county that complied with the statutes in this regard. A reform in the matter by fewer than all the counties would of course have worked injustice to the citizens of the counties making the reform. The valuations of property taken from the census returns for 1850 afford a means of determining the ratio of assessed to true value in each of the counties. These valuations were made by the census enumerators or by the owners. Over-valuations, in the opinion of the secretary of state, about balanced undervaluations. The following table exhibits the ratios for the several counties worked out on this basis:

Brown County paid taxes on 84 per cent of its real value.
Grant County paid taxes on 80 per cent.
St. Croix and Walworth each paid taxes on 76 per cent.
Columbia paid taxes on 75 per cent.
Fond du Lac, Rock and Richland paid taxes on 71 per cent.
Green paid taxes on 67 per cent.
Sauk and Adams each paid taxes on 65 per cent.

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*In the case of the *Webster-Glover Lumber and Manufacturing Company vs. St. Croix County and others* the Supreme Court of the State held that valuation at "what it would have sold for right off, then and there,—a quick sale" to be in accord with the provisions that real property shall be valued at the full value that could ordinarily be obtained for it at private sale. *63 Wisconsin*, 647.

Jefferson and Dodge each paid taxes on 59 per cent.
Milwaukee paid taxes on 57 per cent.
Sheboygan and Washington each paid taxes on 50 per cent.
Racine paid taxes on 49 per cent.
Marquette paid taxes on 45 per cent.
Waukesha paid taxes on 42 per cent.
Dane paid taxes on 40 per cent.
Kenosha paid taxes on 34 per cent.

Brown County paid on twice as much of its real value as Waukesha and on more than twice as much as Dane or Kenosha. The apparent excess of taxation in Wisconsin over other states arose from the low standard at which property was assessed in the Badger State. As evidence that property was underassessed it may be pointed out that the assessed valuation for 1851 was $27,647,264; for 1852, only $27,017,502, while it is fair to assume from the increase of population, influx of capital, and improvements made that the value of taxable property had increased from ten to twenty per cent. It was urged in 1852 that not only the requirements of justice demanded reform, but that it was expedient to assess property at its full value in order that prospective settlers in the West might see that the Wisconsin tax rate was no higher than the rates in other states. The nominal rate in Wisconsin at that time was three and one-half mills; the real rate was but two mills. It was suggested that the State Board of Equalization might adjust the differences between true and assessed values by using statistics of land sales and of assessments to be reported by the register of deeds in each county, also statistics of acres tilled, amount of grain raised and its value, to be collected by the assessors. This plan was adopted many years later. The Secretary of State in 1852 recommended that property owners be compelled to swear to lists of their personal property. This plan was said to have been successful in several other states. In Ohio it had added seventy-five million to the personal property lists.[45] The legislature of 1852, however, took no effective action in regard to assessment and equalization, and the Board of Equalization pro-

[45] *Secretary of State's Report*, 1852, 12-18.

vided for in that year remained powerless and ineffective. This Board found it difficult to perform its duties because about half of the counties failed to make the returns required by law and some of the returns made were not in conformity with the law. The law by 1854 made provision for enforcing returns from town, village and city assessors. The members of the State Board of Equalization were the Governor, Secretary of State, Treasurer, Attorney-General, and Superintendent of Public Instruction. In 1854, the Lieutenant-Governor and the Bank Comptroller were added to the Board.[46]

Complaints of inequality continued to be made. Some interesting testimony was offered in the legislature in 1854 showing that in some cases real estate was taxed at a lower rate than moneys. A farm in Rock county paid a tax of $20, while one-fourth of the amount for which the farm was sold paid a tax of $59. Instances were cited in which $500 drawing interest at seven per cent paid as much as $2,000 worth of real estate renting for $200 a year. Undervaluations were complained of also. Milwaukee county was assessed at three millions; while Milwaukee City, within that county, was said to have been worth thirty millions. Such undervaluations discouraged real estate investments and affected adversely the bond sales of the City of Milwaukee.[47] In 1856 the Common Council of that city memorialized the State Board of Equalization. Assessment and valuation of property in the state for purposes of taxation it was declared had been and was, from custom and precedent, not more than one-fifth and often not more than one-tenth of the actual value, and consequently the rate of taxation for all purposes was so high as to deter immigration, prevent the investment of capital and affect seriously the best interests of the state. Besides, as the rate for city purposes was limited by law, low valuations often prevented the raising of a sum sufficient for necessary expenditures. It was recommended that the State Board after having equalized the assessments in the different counties should increase them five-fold.[48] Governor

[46] Ibid., 1854, pp. 43–44; *general laws*, 1852, ch. 498; 1854, ch. 73.
[47] *Milwaukee Sentinel*, Feb. 28, 1854.
[48] *Secretary of State's Report*, 1856, 100.

Bashford in 1857 characterized the mode of taxing property as defective, unequal, and unjust. A large proportion of the personal property of the state remained unassessed and real estate was taxed on the average at not over one-fourth of its actual cash value. The next year Governor Randall made the same complaint of the way in which the assessment laws were administered.[49]

A law enacted in 1858 sought to bring about reform in assessments of personalty by requiring sworn lists of property. This law was very explicit. It required every person of full age and sound mind, except married women, to list all the taxable property that he or she owned, also all moneys either in possession or on deposit and all credits except unliquidated credits in the form of book accounts. The property of wards was to be listed by their guardians; that of minors, by their fathers or mothers or persons in charge of their property; the property of a wife, by her husband, if he were of sound mind; property held in trust, by its trustee; the property of every firm, company or corporation, by the principal accounting officer, partner or agent. Lists were to be sworn to and a false oath was expressly declared to constitute perjury. Refusal to make out a list and swear to its correctness constituted a misdemeanor punishable by a fine of $10 to $50, recoverable by action for debt, to be begun by the assessor.[50] The property enumerated in the lists was the following:

1. Number of horses one year old (over two years, after 1860).
2. Number of neat cattle one year old (over two years, after 1860).
3. Number of mules and asses over one and one-half years old.
4. Number of sheep over six months old.
5. Number of hogs over six months old.

(June 1st of the year when the statement was made was taken as the reference point in determining the ages of animals; June 5th after 1864.)

6. Pleasure carriages of every kind.
7. Gold and silver watches.

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[49] *Governor's Message*, 1857, 13-14; 1858, 26.
[50] *General laws*, 1858, ch. 115, secs. 1, 2, 12.

8. Piano-fortes and other musical instruments. (A law of 1860 reads piano-fortes and melodeons; in 1881 organs were added.)

9. All real property subject to taxation.

10. Goods and merchandise which a merchant was required to list.

11. Materials and manufactured articles required to be listed by manufacturers.

12. Moneys and credits required to be listed.

13. Farming utensils, mechanic's tools, law and medical books, surgical instruments and medicines.

14. Household furniture, beds, bedding, etc., not exempt from taxation.

15. Corn, hay, oats, rye, potatoes, fruits, wheat, wool, pork, bacon, and

16. All other articles of personal property required by the law to be listed.

Every act of neglect or of connivance upon the part of the assessor worked a forfeiture of from $200 to $1,000. A law of 1859 extended this penalty to apply to the secretary of state and the clerks of the county boards of supervisors. Personal property was to be valued by the assessor at the usual selling price at the time of listing, but if there was no selling price at the situs of the property it was to be valued at what it would probably bring. Money was to be listed at its full value, but depreciated bank notes at their current value. Annuities were to be listed at the value that the owner believed them to be worth in money. Unsold manufactured articles were to be valued at the value of the materials that had entered into them; sheep, without reference to the value of unshorn fleece. No person was required to list more of a credit than he believed to be collectable. A deduction of debts from credits was permitted. The Revised Statutes of 1858 declared that the principle of situs governed the taxation of all goods, wares and merchandise kept for sale in the state and of all materials, machinery and capital used for manufacturing.[51]

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[51] *General laws*, 1858, ch. 115, secs. 1, 2, 3, 5, 6; *revised statutes*, 1858 ch. 18, sec. 11.

The next year with a view to improving the assessment of real estate an oath for the assessor was provided,* as follows:

"I———, assessor for the ——— district in the county of ——— do solemnly swear that the return to which this is attached contains a correct description of each parcel of real estate within said district, as far as I have been able to ascertain the same; and that the value attached to each parcel in said return is, I verily believe, the true value thereof." If he desired to do so the assessor was allowed to add "except as the same has been altered by the town (or city) board of equalization." In 1865 there was added to this oath the statement that the assessor had sought diligently to ascertain the true value of the property returned and that he had not knowingly omitted to demand of any person of whom he was required to demand a statement of the description, amount and value of the personal property that he was required to list for taxation, nor had in any way connived at any violation of the law in relation to the listing and valuing of property.[52]

The dissatisfaction with the work of the old State Board of Equalization led to the creation in 1858 of a new board made up of the Senate and the Secretary of State, which board it was said would be more representative than the old board. Ten years later, this board became a State Board of Assessment. Beginning with the year 1859 for a few years real property was listed, valued, returned and equalized every two years.[53] The assessment law of 1860 provided that in case of failure or refusal to list personal property or to swear to a list as required by law the assessor was to determine the value of the personal property in question through a hearing before a justice of the peace and that the clerk of the county board of supervisors might investi-

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*The following was the oath required of persons listing personal property:

"I do solemnly swear that in the above statement I have truly set forth all personal property which by law I was required to list either on my own account or in behalf of others, according to the best of my knowledge and belief; and that in deducting the amount of my indebtedness I have included no other than bona-fide indebtedness accruing from actual consideration, and have not exceeded the amount thereof."

[52] *Laws of 1859*, ch. 167, sec. 24; *Laws of 1865*, ch. 538, sec. 43.

[53] *Laws of 1858*, ch. 115; *Laws of 1868*, ch. 130, sec. 4; *Laws of 1859*, ch. 167, sec. 52.

gate in the same manner if he thought a valuation returned to be too low. To the value ascertained by the assessor fifty per cent thereof was to be added. The new Board of Equalization and the new assessment laws gave good results. The increase in 1859 over 1858 in the valuation of property returned was $82,619,680; as equalized it was $98,702,213. This was an enormous increase as the total equalized value in 1859 was only $168,620,233.[54] The increase in personal property returned was from six millions in 1857* to twenty-five millions in 1858 but in 1859 there was a fall to thirteen millions, which the law of 1860 raised in that year to twenty-seven millions, which fell again to twenty-four millions in 1861 and 1862 and in 1863 rose to twenty-five millions.[55]

The laws continued to prove defective. The law of 1860 although it improved conditions considerably was open to much criticism. This law required the citizen to return a list of his property and to swear that the list was correct, but he might bid defiance to the authorities if his list was found to be false and false statements were by no means uncommon. Of course he was liable to prosecution for perjury, but that remedy was rarely if ever resorted to. It was suggested by the Secretary of State in 1865 that the evil might be mitigated by providing that the assessor, when he had reason to believe that a statement of property was incorrect, should add to the list what he thought should be added and should then notify the person who had made the statement to appear before the local board of equalization and show cause why such addition should not hold. If the assessor failed to do his duty with respect to such undervaluations, it should be incumbent upon the board of equalization to make the additions and notify the party. In other words, the Secretary recommended the adoption of what is known in taxation as the "doomage principle." The law of 1860 was defective in other respects also. It did not provide a means of collecting taxes from a tax payer who moved out of the county in which he owed taxes. In some cases persons

[54] *Governor's Message*, 1860, 6.

*1857 was, however, a panic year.

[55] *Secretary of State's Report*, 1860, 139.

living in the state took mortgages in the names of persons living outside of the state and thus escaped taxation on these securities. The provisons for the collection of taxes and the sale of lands for taxes worked great injustice. Lands on which taxes were not paid might be purchased by the county in which they were situated and after two years such lands were not taxable. Hence in many counties the amount of taxable property was greatly reduced. The amount of certificates of such lands held by counties, together with the enormous sums expended for the printing of delinquent lists and for advertising the sales imposed annually a great burden upon those who paid their taxes promptly. Persons who believed that they had cause to be aggrieved at any tax might enjoin its collection and pending the ensuing litigation the tax was paid by their neighbors. The Secretary of State said, "The prompt contributors to the public revenues who scorn to avail themselves of the insufficiency of the laws, who prize their homes equally with the protection the state affords to the enjoyment of them, are under the system now in force in this state compelled to toil not only for the portion of the revenue which the state can equitably demand of them, but also that which the state exacts by reason of the delinquency of others." It was recommended that the courts be prohibited from enjoining the collection of a tax and that it be provided that no technical error should invalidate a tax, also that every individual be compelled to pay his taxes, that municipal corporations levying illegal or fraudulent taxes be made liable for damages, that a charge of twenty-five per cent be entered against every piece of land delinquent in any year and if it should be delinquent for two years that it be offered for sale and if not sold for the amount of the taxes, interest and penalty that it should become forfeited to the state, also that counties be prohibited from buying lands sold for taxes. It was believed that such changes in the law would lighten the burden of which the prompt taxpayer justly complained.[56]

In connection with the law of 1860 it should be noted that the Supreme Court decided in 1865 in the case of *Matheson vs.*

[56] *Secretary of State's Report*, 1865, 82-83.

Town of Mazamanie that neither the assessor nor the town board of supervisors had power to increase the value of the non-enumerated articles of personal property returned and sworn to by the plaintiff.[57] In 1868 in the case of *White vs. City of Appleton* the Court held that a board of equalization had no power to increase the amount of a merchant's stock which the merchant had returned and sworn to.[58] In the case of *Ketchum vs. the Town of Mukwa*, tried in 1869, the Court decided that town and city boards in equalizing personal property had no power to increase the items returned by the taxpayer and that the authority of the assessor in the first instance, and of the clerk of the board of equalization in the second, to enter upon an examination of the amount and value of the property of any individual was expressly limited to those cases in which the individual either refused or neglected to make a list of his property or refused to swear that his list was correct. The absence of any clause in the law authorizing such examination or inquiry implied that the sworn list was to be final in so far as the amount of taxable property was concerned.[59] In the case of the *Town of Wauwatosa vs. Gunyon*, tried in 1870, it was held that the power of county boards of assessors to agree jointly on a value basis was confined to "enumerated articles," the values of which were fixed by the assessor.[60]

The tax system continued to be administered imperfectly and with difficulty. The property of the state had been steadily increasing in value, yet the assessed valuation in 1866 was twenty-two millions less than in 1860. In some districts assessors were elected and re-elected because they succeeded in listing property

[57] *20 Wisconsin*, 191.

[58] *22 Wisconsin*, 639.

[59] *24 Wisconsin*, 303.

This decision had reference to the law of 1865 which was for the most part merely a codification of previous laws. *Laws of 1865*, ch. 538.

This law of 1865 made a rather important addition in providing that if an assessor found any property real or personal that had not been assessed the preceding year he should assess it for that year as well as for the current year. A law of 1866 provided that the assessment for the preceding year should be at twice the value of the property. In 1878 it was provided that property not assessed for the next three years preceding or any one of them should be assessed. *Laws of 1865*, ch. 538, sec. 32; *Laws of 1866*, ch. 141; *Laws of 1878*, ch. 334, sec. 1.

[60] *25 Wisconsin*, 271.

a little lower than it was listed in neighboring towns or districts. It was recommended that some means of appointing rather than electing assessors be found. In speaking of equalization in 1866 the Secretary of State said, "Owing to the multitudinous army of officers having charge of the assessment of property many of their returns were defective in form as well as in figures and footings. The number of acres of land returned for 1865 as subject to assessment was found to be incorrect upon subsequent examination, hence equalization based on the returned average value per acre must necessarily be unequal and unjust."[61] Complaints were made constantly to the Secretary of State by assessors in all parts of the state. Some complained of being unable to construe the laws; others, of being unable to enforce them. The great difficulty seemed to be in securing a proper return of the amount and value of personal property. Assessors asserted that under the law obtaining a large amount of taxable personalty could not be reached. The Secretary, while admitting that there was some truth in these assertions, held that the assessors did not govern themselves by the plainest provisions of the law. He declared that the assessment returns of nine-tenths of the counties showed evidences of palpable violations where the law was perfectly plain. In support of this he showed that in one county the Board of Assessors, sworn to assess property at its full value, passed a resolution to assess all property at fifty per cent of its value. In another county the assessors agreed to assess bank stocks at par, personal property at forty cents on the dollar "and real estate in proportion." In another county it was the rule to assess horses at $30, cows at $8 and sheep at twenty cents. A few counties, Fond du Lac, Winnebago, Green Lake, Marquette and others, so far complied with the law as to be sustained by the State Board of Equalization. It was estimated that if all the counties had complied with the law as faithfully as did these few, the aggregate amount of property returned would have been doubled. The statements of personal property were too general. The inclusion of an indefinite number of items under one general heading allowed the concealment of a large amount of prop-

[61] *Secretary of State's Report*, 1866, 39, 43.

erty. It is interesting to note how many times the appointment of assessors instead of election has been recommended.[62]

In 1866 a law was passed requiring the Governor to appoint three commissioners to codify the laws relating to the assessment and collection of taxes and to recommend such changes as would secure greater uniformity and prevent frauds and evasions. These commissioners, known as the Tax Commissioners of 1867, were Stoddard Judd, George Gary and D. K. Tenney. Reference has already been made to the state of confusion in which these commissioners found the tax laws. In the administration of the tax system they found everything but uniformity. In one county swine were taxed at one cent a pound; in another, at eight cents. In hardly any two counties was there uniformity with respect to the assessment of personal property. The commissioners received no statistics from the counties of Milwaukee, Rock, Waukesha, La Crosse, Manitowoc and several others embracing the wealthiest and most populous portions of the state, in which portions it was believed that the execution of the law had been most lax. An examination of the assessment rolls of the county of Milwaukee disclosed that not more than one-seventh or one-tenth of the persons assessed for personal property had made out any list. The following table was prepared by the commissioners to show inequality in assessments.

Counties.	Horses.	Cows.	Oxen, per yoke.	Sheep.	Swine.	Pianos.
Brown	$15 to 100	$15 to 25	$25 to $60	$1-1¼	$3-4	$50-300
Crawford	45-100	15	70	1	2	.....
Dodge	75	15	75	2	3 cts. a lb	125
Grant	75-100	10-30	17-125	3-5	4 cts. a lb.	50-400
Green	30-90	15	80	2	3 cts. a lb.	.....
Jefferson	25-150	15-20	75	2	2½ cts. a lb.	40-150
Kenosha	75	25	80	2	4 cts. a lb.	.....
LaFayette	30-100	12-25	25-60	1½	3 cts. a lb.	.....
Ozaukee	30-50	12	30-40	1¼	2-3 cts a lb.	25-100
Racine	75	20	.....	2	8 cts. a lb.	150-200
Sheboygan	50	16	50	1-3	2 cts. a lb.	100-300
Sauk	15-80	.....	60-80	.....	2 cts. a lb.	100-300
Washington	50	12	69	1¼	$4 each.	200
Fond du Lac	25-250	8-30	40-110	3-15	3 cts. a lb.	20-250

However, as personal property does vary considerably in value the table does not show as much as could be desired. The

[62] *Secretary of State's Report*, 1867, 43.

statistics of the assessment of real property were more luminous and conclusive, e. g. in Green Lake county real estate was assessed at forty per cent of its cash value and personal property on a still lower basis; in Iowa county real estate was assessed at its full value, but in Walworth and Waupaca counties at but fifty per cent of its full value. Many citizens believed that the function of the town assessor was not to assess all property at its true value but to assess the property of his town no higher and even a little lower than property was assessed in other towns, in order that his town might avoid as much as possible of the state and county taxes. Consequently real property was assessed at extremely low values, varying in different localities from one-fourth to one-half of its real value. Personal property had necessarily to be undervalued also and such underassessment the commissioners averred led to the total nontaxation of a large part of the moneys and credits in the state and to a great undervaluation of merchandise. The commissioners insisted that undervaluation is inevitable and that real estate must in the end bear more than its just burden so long as property continued to be valued and assessed by elected assessors.[63]

In 1867 owing to the agitation of the matter there was a spasmodic reform. As a result of the efforts and the honest determination of the assessors in some counties, and of the efforts made by the department of state assisted by a few prominent citizens, the assessment returns for 1867 were more nearly satisfactory than they had been for several years. The valuation in 1867 was in round numbers 211 millions as against 162 millions in 1866. No doubt, however, the boom following the Civil War accounts for a part of this increase. Equalization reduced the 211 millions to 196 millions.[64]

As a result of the recommendations of the commissioners it was provided in 1868 that any officer refusing or neglecting to perform his duty or consenting to or conniving at any evasion of the tax laws was guilty of a misdemeanor and punishable by imprisonment in the county jail from one month to one year or

[63] *Report of Tax Commissioner*, 1867, 5, 6, 8.
[64] *Secretary of State's Report*, 1867, 39.

by a fine of from $25 to $500 or both. Furthermore, he was declared to be liable to civil action in double the amount of damages resulting to any town or person by reason of the assessor's refusal, neglect, or connivance. The same law prescribed that in determining the value, the actual selling value, of real estate the assessor should consider location, quality of soil, quantity and quality of standing timber, water privileges, mines, minerals, quarries, buildings, fixed machinery and improvements of every kind. This law changed the date of the assessment of personal property to May 1. It also—which is very important—increased the number of heads under which personal property was listed and provided that it should be valued by the assessor on actual view in so far as possible.[65]

The assessment figures for 1868 showed reasons for dissatisfaction with the work of the State Board of Assessment. The returned assessments for Ashland, Bayfield and Outagamie counties were from twenty-one to twenty-eight per cent higher than those fixed by the State Board. Those of Jefferson, Milwaukee, Ozaukee, Rock, Trempealeau, Walworth, Washington, Waukesha and Waushara counties varied from forty-four to seventy-one per cent higher. Marquette County was one hundred and twenty-one per cent higher. A board of not more than one-third the number of the board as then constituted would have done the work of assessment with more facility, accuracy, and impartiality. Secretary of State Thomas S. Allen wrote with reference to the Board, "Local feelings, interests and prejudices are strong in all minds, and great minds are not an exception." The work of the board was done by a committee having in some degree the fear that opposition would be raised in some quarter, resulting in the total defeat of their recommendations, if they insisted on strict justice. The inefficiency of the board was not, however, due wholly to its constitution. It was greatly hampered in its work by a lack of statistics showing the values of the counties and their progress in wealth. It was recommended that the board meet only once in three years and that prior to each meeting there be gathered statistics of population, of manufactures, of improved and unimproved lands, of the leading pro-

[65] *General Laws*, 1868, ch. 130, secs. 16, 20, 34.

ducts of the soil, of the forests and of the mines, of live-stock, of banks and corporations, also that the actual value of property be returned each year, the number and value of the different varieties of live stock assessed, the value of money, bonds, mortgages and other property admitting comparison, also the amount of county, town and other taxes levied each year. Such data it was thought would enable an intelligent board of a limited number of persons to arrive at an approximately correct conclusion as to the actual and relative values of the property of the state. The experience of the year 1868 confirmed the belief that increasing the heads under which personal property is listed conduces to a larger return. The counties that used the improved blank in 1868 showed the largest increases of personal property.[66]

The next year it was enacted that assessors should gather statistics of the number and value of live stock, vehicles, gold and silver watches, pianos and melodeons, merchants' and manufacturers' stock, bank stocks and all other personal property.[67] A bill requiring returns of the amounts of county, town, and other taxes was lost. This statistics law proved to be a wise piece of legislation. It afforded the first approximate estimate of the actual value of the various kinds of property subject to taxation. The total value returned for 1869 was more than double that of any preceding year and was

Personal property	$82,737,142
Lands	167,912,359
City and village lots	176,977,855
Total	$427,627,356

Green Lake and Ashland counties are not included in the above figures. Their valuation was eight or nine millions. The personal property returns for 1869 showed that the listing was still too narrow, as nearly thirty-one millions were returned as "other personal property."[68]

The reform of 1869 proved, however, to be in part at least,

[66] *Secretary of State's Report*, 1868, 36-39.
[67] *Laws of 1869*, ch. 106.
[68] *Secretary of State's Report*, 1869, 23.

only another spasmodic one: all of the ground gained in 1869 was not lost in 1870, but the aggregate valuation fell off by $1,800,000. Horses were valued at fourteen as against sixteen millions in 1869: cattle and mules showed a smaller decrease: vehicles declined twelve per cent. There was a marked decline in all kinds of personal property.[69] Undoubtedly a part of of this was due to depreciation in particular cases, but the aggregate decline could hardly be accounted for in this way. In 1871 the total assessed valuation fell to $329,503,603, a fall of almost one hundred millions in two years. The returns for that year showed a greater uniformity between the counties as to different kinds of property, but the legal basis of true cash value was far from being adhered to. Assessors uniformly under-assessed all kinds of property believing, that in so doing they lessened their towns' burden of state and county taxes. The adjustments made by the State Board of Assessment and Equalization remedied the evil in some measure, but there were required more stringent laws regulating the duties of assessors, and providing for a more nearly thorough enumeration and classification of property in order that the boards of equalization might more fully correct erroneous assessments made by town officers.[70]

In 1872 an attempt was made to improve the administration of the personal property tax. A law of that year provided that merchants' goods, wares, commodities kept for sale, tools and machinery, manufacturers' stock, farm implements, live stock, and farm products should in all cases be taxed at their situs. Other personal property owned by non-residents who have no agent in the state is to be taxed at its situs. If there is an agent the tax is levied where he is located. A law of 1882 declares specifically that saw logs, railroad ties or telegraph poles cut in the state and owned by non-residents having no agent in the state shall be taxed where they are piled up for shipment.[71]

Two important laws were enacted in 1873. In order that the state taxes might be equalized more fully it was enacted that

[69] Ibid., 1870, 21.
[70] *Secretary of State's Report*, 1871, 113; Ibid., 1872, 7.
[71] *Laws of 1872*, ch. 148; *Laws of 1882*, ch. 258.

the registers of deeds in the several counties should furnish the Secretary of State with the following information respecting all real estate transferred in their respective counties:

1. Date of transfer.
2. A brief description of the land sold and the quantity thereof.
3. The consideration stated in the deed.
4. The assessed value of the property, as shown by the last assessment roll.

The purpose of this law is to afford a means of determining the approximate ratio between real and assessed value and thence the approximate real value of all taxable real property. A simple illustration will make the plan clear. Suppose that in a certain county in a certain year the aggregate sales of real property amounted to two million dollars and that the assessments of the property sold amounted to one million dollars. Then the ratio of true to assessed value in that county for that year might be assumed to be approximately two to one. Consequently if the property in the county was returned at ten million dollars, the real value would approximate twenty millions. Errors upon the part of registers, both intentional and unintentional, and fictitious and nominal *considerations* in deeds have to some extent marred the carrying out of this plan of determining true value in Wisconsin, but nevertheless the plan has served very well. The other law of 1873 made the Secretary of State, the State Treasurer, and the Attorney-General the State Board of Assessors.[72]

The average price for which lands were sold in 1872 as shown by the returns of the registers of deeds was $11.18 an acre; the assessed value of the same land was only $6.06 or 54 per cent: the sale price of city and village lots was $551.11 on the average; the assessment of the same was $353.31 or 64 per cent. The great underassessment was due in great part no doubt, as in previous years, to the belief that if the aggregate assessment of a city or town was small, the proportion of the state and county tax paid by such city or town would be correspondingly small. This idea, however, had no foundation in fact after the State

[72] *General Laws*, 1873, chs. 210, 235.

Board of Equalization had become a State Board of Assessment, whose duty it was to make assessments irrespective of the city or town valuations and based on statistics of population and wealth furnished by the Secretary of State. The city and town assessments were valuable more for determining the number of articles of each class of assessable property and not so much their valuation. If the State Board found that the state average for any kind of property was too low, the board raised it to what they thought it ought to be and consequently every county, town and city was taxed a certain amount without regard to their returned valuations. County apportionments and assessments were made in the same way, so that local under-valuations effected little, if anything, and by raising the tax rate drove capital away from the state, thus crippling its industries and retarding its growth.[73]

In 1874 the average value of lands sold was $14.56; their assessed value was $7.38 or less than 51 per cent. City and village lots sold for $656.16 and were assessed at $383.22 or 58 per cent.* In all the counties but one assessed value was below real value; in that one, Bayfield county, the average sale price of lands per acre was $2.53; the average assessed value was $3.48. Not only was property under-assessed, but as ever before and since much personal property escaped altogether. Considerable difficulty was experienced in collecting taxes on saw logs, which were in a town at assessment time but were subsequently removed.[74]

In 1875 lands sold for $15.60 and were assessed at $6.51 or less than 42 per cent. City and village lots sold for $731.49 and were assessed at $354.89 or 48½ per cent. The returned valuation of personal property was almost four millions less than in 1874; that of city and village lots, more than four millions less; that of lands more than three millions less, yet property had undoubtedly increased in value. The next year, however, there was a decided increase in the assessed values of each kind of property, yet under-valuation continued to be the rule. Lands

[73] *Secretary of State's Report*, 1873, 22-23.

*In each year the selling prices for that year are compared with the assessments for the year preceding.

[74] Ibid, 1874, 32, 34.

were assessed at 46 per cent of their value; city and village lots, at 53½ per cent. In the opinion of the Secretary of State the law seemed to give the assessors all the power necessary to secure a full and complete assessment of property; but such an assessment seemed possible only under "a favorable combination of circumstances." The evils in the tax system seemed to lie not so much in the imperfections in the law as in the difficulty and even impossibility of securing a full compliance with the law.[75] In 1877 the Secretary of State expressed the opinion that the law in theory was as complete as could be expected and that the difficulty lay wholly in its execution. He recommended that any additional legislation be confined to an effort to secure reasonably strict compliance with the provisions of the law then in force. The observation apropos of this matter of the Governor in 1878 is well worthy of notice. He said that the prevailing tendency in Wisconsin legislation to require so many returns and reports under oath had tended to beget a disregard for the solemnity of an oath.[76] In 1877 lands sold for $14.53 and were assessed at $6.77; lots sold for $557.94 and were assessed at $300.31. Personal property and lots declined in assessed value; lands increased somewhat.[77]

In passing, we may notice a law of 1877 relating to the assessment of iron ore lands. In assessing such lands the assessor is required to add to the value of the land itself the net value of the iron mined in the preceding year. The gross product, its value, and the cost of mining it, the person, real or legal, who owns or leases the land is obliged to furnish to the assessor. If the owner and the exploiter are different persons both are obliged to report to the assessing officer. If the report is not rendered in the time provided for by law the assessor is to fix upon such a value as he thinks is correct, but in such cases he is not to deduct the cost of mining. The assessor is empowered in any case to seek any and all information that will enable him to put a true value on the property.[78] Assessors are to

[75] Ibid., 1875, 35-36; ibid., 1876, 29.
[76] Ibid., 1877, 31; *governor's message*, 1878, 6.
[77] *Secretary of State's Report*, 1877, 29.
[78] *Laws of 1877*, ch. 269.

value all property from actual view if possible, but the fact that the extent and value of minerals or other valuable deposits in any parcel of land cannot be ascertained shall not deter the assessor from putting upon such parcel the value that could be ordinarily obtained for it at private sale.*

In 1878 another wave of reform swept over the state. Without doubt this was due to the decision of the Supreme Court in the case of *Schettler vs. The City of Fort Howard*. The Court declared in this case that under-assessments or assessments at arbitrary values invalidated the whole tax.[79] The State Board was of the opinion that the abstracts of the assessment rolls for 1878 showed that the local taxing officers had in general tried honestly and faithfully to govern themselves by the express provisions of the laws, which directed that all taxable property should be assessed at "the full value which could ordinarily be obtained therefor at private sale." The abstracts showed an increase of $103,560,228 over the preceding year. In order that no county should bear an inequitable share of the state tax in consequence of "its assessors having had conscience as well as judgment awakened," the Board distributed the increase among the counties. The next year, however, the aggregate valuation fell off forty-nine millions. The board raised it about thirty-nine millions, as the decline was evidently due to remissness on the part of the assessors.[80]

A new penalty law relating to the return of property for taxation was enacted in 1889. It provides that any person, firm, or corporation owning or holding personal property of any kind subject to taxation, who or which shall intentionally make a false statement to the assessor of his or its district or to the board of review for the purpose of avoiding the payment of just and proportionate taxes on such property shall upon conviction forfeit $10 for every $100 or major fraction of the property withheld from the knowledge of the taxing authorities. It is the duty of every district attorney to investigate upon complaint of any tax payer of an assessment district, and

* *Laws of 1907.*

[79] *43 Wisconsin*, 48.

Other cases in point are to be found in, *25 Wis.*, 490; *29 Wis.*, 51; *37 Wis.*, 75; *42 Wis.*, 502; *43 Wis.*, 55; *49 Wis.*, 645; *54 Wis.*, 580; *65 Wis.*, 208.

[80] *Secretary of State's Report*, 1879, 30.

if he finds the complaint well-founded to bring action to recover the forfeit. This law provides also that assessors shall be punished by a fine of from $100 to $300 for accepting a statement as to moneys, notes, bonds, mortgages, or other securities and evidences of credit without requiring an oath as to the correctness of the statement. A law of 1901 provides that an assessor or member of a board of review guilty of dishonesty in the discharge of his duties shall be dismissed from office in addition to being fined. Another law of 1901 provides that any assessor who asks for, solicits, or receives any reward from a property owner for under-valuing his property is to be punished by imprisonment for not exceeding six months or by a fine of not exceeding $500. Any member of a board of review who under-values or agrees with another member to an under-valuation or omission from the assessment roll of any property, or who intentionally in any way fails to do his full duty is to forfeit not less than $50 nor more than $250. In addition to the above penalties any assessor or member of a board of review guilty of misconduct in the discharge of his duties is civilly liable for any loss to any one because of such misconduct. The penalty touching the assessor applies also to persons who solicit the trade of any property owner by promising him a lower assessment on his property, also to persons who attempt to bribe an assessor.[81] Notwithstanding these laws in at least one city of the state low assessments are exchanged for fire insurance patronage.

The Supreme Court in 1889 in the case of *The State ex rel. Smith vs. Gaylord* reached the very important decision that boards of review have the power upon evidence to raise sworn valuations of personal property. In the same year the Court decided that moneys, bonds, and mortgages are taxable to a Wisconsinian at his situs even if the property is in another state. In this case Dwinnell admitted that he had $14,000 in moneys and securities in the hands of an agent in Nebraska, but contested the right of the board of review to add such sum to his sworn list. The Court upheld the board.[82]

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[81] *Laws of 1889*, ch. 381; *Laws of 1901*, chs. 330, 379.
[82] *73 Wisconsin*, 306, 316.

A law of 1889 prescribed the following statement of assessed valuation from town, city and village clerks.[83]

Description of property.	Aggregate amount.	Aggregate amount.
1. Horses of all ages		
2. Neat cattle of all ages		
3. Mules and asses of all ages		
4. Sheep and lambs		
5. Swine		
6. Wagons, carriages and sleighs		
7. Gold and silver watches		
8. Pianos, organs and melodeons		
9. Value of bank stock		
10. Value of merchants' and manufacturers' stock		
11. Amount of moneys, accounts, bonds, credits, notes and mortgages		
12. Value of all other personal property		
13. Total value of personal property		
14. Number of acres of land and value thereof		
15. Aggregate value of city and village lots		
16. Total value of real estate		

The list required by a law of 1897 is somewhat different. It reads as follows:

1. The number and value of all horses, neat cattle, mules, asses, sheep, lambs, and swine of all ages.
2. The number and value of wagons, carriages, and sleighs.
3. The number and value of gold and silver watches.
4. The number and value of pianos, organs, and melodeons.
5. The value of bank stock.
6. Amount of moneys, accounts, bonds, credits, notes, and mortgages.
7. The value of leaf tobacco.
8. The value of logs, timber, lumber, ties, posts and poles, not being manufacturer's stock.
9. Number and value of steam and other vessels.
10. The value of real and personal property and franchises of water and light companies.
11. Number and value of all bicycles.
12. The value of all other property not exempt.[84]

[83] *Laws of 1889*, ch. 479.

[84] *Laws of 1897*, ch. 380, sec. 1050.

A law of 1897 provided for the appointment by the Governor of a tax commission of three members to serve for one year and without compensation. The commission was to be appointed to gather statistics, make investigations, and recommendations. The persons appointed were Burr W. Jones, K. K. Kennan, and George Curtis, Jr. Their report, which appeared in 1898, is an excellent piece of work and contains a very good bibliography of writings on the subject of taxation. The commission found that different kinds of property were omitted from assessment in different counties according to custom. Eighteen counties returned no grain or farm products. In twenty-three counties no household furniture above the value of $200 was found, although some of the smaller and poorer counties returned large amounts. Fourteen counties reported no money in possession or on deposit, although in some of these counties bank reports showed deposits. No notes, bonds, or mortgages were returned by twenty-one counties. From the best information obtainable it seems probable that personal property in Wisconsin fully equals in value the real estate, yet in 1897 the assessed value of personalty was only seventeen per cent of the total assessed valuation and it had been decreasing proportionally for years. The commissioners very wisely recommended a system of comity between the counties as a means of overcoming the evil of tax evasion.[85] The phases of inequality noted by the commissioners are important. They dwelt in particular upon the discrimination against the farmer, who seldom has anything that can be concealed from the assessor, and nearly all of whose property is taxed. In not a few instances farmers whose incomes do not exceed $600 a year pay $75 to $100 annually in taxes, while a great number of business and professional men having incomes of over $6,000 pay little if any taxes. According to the State Census of 1895 and the assessments of that year 70 per cent of the domestic animals in the state, mostly the property of farmers, were assessed, and assessed at nearly 60 per cent of the true value of all the animals in the state. Those assessed were on the average assessed at 84 per cent of their value. Note how this compares with the assessment of bank

[85] *Report of Tax Commission*, 1898, 74.

deposits. The reports of the comptroller of the currency and of the state bank examiner show that on a given day in 1896 there was on deposit in Wisconsin banks $55,754,137.95. Taxes are supposed to be paid on the average amount of moneys in possession or on deposit during the year. The total assessed value of money in possession and on deposit in 1896 was $3,032,-103, exclusive of valuation for the city of Milwaukee, the assessed value of whose moneys, notes, bonds, mortgages, etc., was only $2,266,885. Disregarding Milwaukee the assessed valuation was a little over 5 per cent of the amount reported by the comptroller, and counting and including all of Milwaukee's $2,266,855 as money the assessed valuation was only a little over 9 per cent.[86] Of course the writer admits that the amount reported by the comptroller may have been higher than the average amount for the year, but under the most liberal construction this property could not have been assessed at more than 20 per cent.

Underassessment leads to inequality even in the same assessment district, because comparisons with former assessments or with an arbitrary standard and of one piece of property with another soon lead the assessor into a labyrinth of confusions. Besides, the absence of a definite standard begets indifference and carelessness in honest officials, opens the way to dishonesty, and gives room for the play of bias and prejudice. In some districts, particular interests and certain classes are favored. The Commission of 1897 found a just and intelligent administration of the tax laws in some localities, but in the majority of places the assessment had become little more than a farce. County assessments had become a disgraceful struggle between the members of county boards, each member trying to promote the interests of his district at the expense of the others. Underassessment makes redress difficult in the cases of aggrieved individuals, because before the board of supervisors or in court such an individual must show that his property is over-assessed in relation to other properties. From the point of view of the law he has not in many cases been over-assessed but under-

[86] *Report of Tax Commission*, 1898, 72, 73.

assessed, although in comparison with his neighbors he may have been over-assessed. "He must make a virtual re-assessment of the district by testimony produced before the board or court." In court a mass of conflicting values confuses the judge, who, disposed to uphold all measures for the collection of revenue, is unable to find that the assessor *intentionally* over-assessed the plaintiff. If the court orders a new assessment the same farce is played over again.[87]

In Wisconsin in the twenty years from 1877 to 1897 the assessed value of real estate increased about 89½ per cent; of personal property, only 40½ per cent. This record is indeed poor, but in comparison with California's record it is good, and Professor Plehn thinks that California's general property tax conforms very closely to the ideal general property tax. Professor Plehn says, "If it is possible to administer any general property tax fairly this one could be so administered. If it is possible under any law to discover all the property owned by the citizen, it ought certainly to be possible under this law." However, in California from 1880 to 1896, the assessed value of real estate increased 125 per cent; of personal property, only about 8 per cent.[88] Taking the country as a whole, Wisconsin's record is poor. The United States census estimate of the true value of taxable property in Wisconsin in 1890 was $1,500,000,000; the total assessed value was $579,839,542; the difference, $920,160,458.*

According to the eleventh census the average percentage of assessed to true valuation in the United States as a whole was 39.29 per cent; Wisconsin's percentage was 31.48 per cent. If Wisconsin had simply reached the general average its total

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[87] *Report of Tax Commission*, 1898, 78, 81, 82.

[88] Ibid., 117.

* State Assessment.

1903.	Real Estate	1,309,504,464
	Personal Property	443,667,536
	Total	1,753,172,000
1904.	Real Estate	1,422,621,485
	Personal Property	420,219,515
	Total,	1,842,841,000

assessed valuation would have been greater by more than $100,000,000.†

If all the property in Wisconsin had been assessed at one-third of its value there would not have been so much cause for complaint, but investigation showed that some classes of property escaped almost entirely, while others were assessed at their full value and frequently beyond. That condition obtains today nor is the discrimination wholly between classes of property; it holds between persons owning the same kind of property. Now, as in 1897, the possessions of the poor man are few and tangible; those of the rich man are in great part, bonds, stocks and mortgages, which for the most part escape taxation.[89]

The Tax Commission of 1897 said of the Wisconsin system, "No intelligent man can become familiar with the methods of raising taxes now in vogue in Wisconsin without being impressed by the fact that they are defective in many particulars and fall far short of what the intelligent and progressive people of this state have a right to demand."[90]

Provision was made in 1899 for the appointment of a tax commissioner, and a first and a second assistant. Their tenure of office was to be ten years and they were to receive $5,000, $4,000 and $4,000 a year respectively. The Governor appointed Norman S. Gilson, George Curtis, Jr., and Nils P. Haugen. The law provided that the expenditures of the tax office for clerks, etc., was not to exceed $10,000 a year.[91] The Commission has published two very excellent reports, one in 1901 and the other in 1903. A law of 1905 made all the commissioners of equal rank* and made the commission permanent.

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†The following percentages, for 1890, of assessed to true value are of interest:

Michigan	42.87
New Jersey	61.75
Maine	63.20
Massachusetts	76.83
New Hampshire	80.91

In 1890, real property in Wisconsin was assessed at 45.4 per cent of its real value and personal property, at 15.83 per cent. *Governor's message*, 1901, 13. 1900—Wisconsin property assessed at 37 per cent of true value. *Twelfth Census.*

[89] *Report of Tax Commission*, 1898, 71, 72.

[90] Ibid., 69.

[91] *Laws of 1899*, chs. 206, 322.

* Since this was written the commission has issued its 1907 report, contain-

In 1899 assessments varied in the different counties from 19 per cent to 91 per cent of real value, estimated by returns of land sales by registers of deeds. There was a lack of uniformity among districts in the same county, but some measure of uniformity generally characterized assessments in the same town or district through a period of years. Letters sent out to manufacturers by the tax commission in 1900 brought disappointing results. To 385 letters sent only 186 replies were received. This fact and the fact that the assessment in 1900 was higher than in former years probably make the result of this inquiry of little significance. The figures indicate that manufacturies are taxed on 37.2 per cent of their value. To merchants 4,300 letters were sent; only 1,339 satisfactory replies were received. The ratio indicated by these replies is 45.5 per cent. The returns from banks represented 90 per cent of the banking capital in the state and indicated that banks were taxed on 77.7 per cent of their paid up capital, 63.1 per cent of the value of stocks and surplus, and 58 per cent of paid up capital, surpluses, and undivided profits.[92]

The commissioners ascribed the practice of tax dodging to three causes; first, human selfishness; second, the belief entertained by many that the taxation of moneys, credits, and securities is unjust; third, the knowledge that many others withhold their property from taxation. The commissioners in their 1901 report make some very important observations apropos of evasion. The practice of evasion has become so general and so long continued that it has come to be relied upon as a legal rule of property. Business obligations are incurred, investments and values are made and adjusted with reference to this rule. This fact is one exerting great influence against any effort to secure direct taxation of intangible property, and there are grave questions of public policy involved in any changes that would operate to materially change such condition. This leads us to a discussion of the taxation of credits. Legislation cannot change human nature. Experience in the older states

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ing among other valuable items an interesting and important contribution on mortgage taxation, by Professor Thomas S. Adams.

[92] *Report of Wisconsin Tax Commission*, 1901, 71.

shows that no means of reaching intangible personalty can be devised. Even the stringent inquisitorial law of Ohio was a failure. As public opinion, however, seems to favor the taxation of or rather the attempt to tax such property, the commission recommended that compulsory swearing to lists be abolished and that assessors and boards of review be empowered to assess by estimate property that they thought was escaping, and that as a protection to the tax-payer it be provided that he have ample opportunity to be heard before the board. When assessors were urged by the commission to avail themselves of the slight doomage power in the old law, gratifying results had followed. Penalties affecting both assessor and tax payer were recommended also.[93]

Apropos of the taxation of credits, the opinion of Governor Dewey of over a half century ago is interesting. The tax law of 1849 subjected credits to taxation with the evident purpose of compelling the lender and the speculator to assist in the support of the government, but in the opinion of the Governor the law did not accomplish its end but rather imposed in most cases, an additional burden on the borrower and the debtor, as the tax was added to the interest rate. The Governor maintained that the taxation of credits produced double taxation. A farm sold on credit for example was taxed twice. Property and not its phantom was declared to be the proper subject of taxation[94] There can be no doubt that double mortgage taxation is unjust, but whether a tax on credits is shifted to the borrower in the form of a higher interest rate is a problem as yet unsolved.

As we might suspect, information gathered in 1897 from well-informed citizens, from assessors and other officers of experience in administering the tax laws indicated that only a very small proportion of mortgages were taxed in Wisconsin. Up to 1903 the mortgage was taxable as personal property and the real property mortgaged was taxable regardless of the mortgage. Publicity of record did not render concealment or evasion impracticable. The commonest method of evasion was to have the mortgage drawn in favor of some person living outside of

[93] *Report of Tax Commission*, 1901, 138-139, 144-148.
[94] *Governor's Message*, 1850.

the state or in a county other than the one in which the mortgage was recorded. The nominal mortgagee usually conferred the power of attorney on the real mortgagee or his agent, which power authorized the collection and satisfaction of the mortgage. Sometimes the mortgage was assigned at once to the actual mortgagee or his agent and the assignment was withheld from public record until the mortgage was satisfied. It was estimated that in Milwaukee county, which contains the only large city in the state, 90 per cent of the mortgages put on record were recorded in the names of non-residents. In localities where assessors were not in the habit of examining the mortgage records this method was not employed to any extent.[95]

Owing to diligent efforts upon the part of the supervisors and assessors and in part perhaps to the fact that a lower rate of taxation resulting from a fuller valuation induced many persons to list credits theretofore concealed, there was in the years 1899 to 1902 a marked increase in the amount of credits taxed; the amount in 1902 was more than double the amount in 1901.* This increase is, however, no evidence that credits can be reached if assessors will only make the effort. In many parts of the state prior to 1902 little effort had been made to tax credits, consequently holders were accustomed to make little endeavor at concealment and so in 1902 they were taken unawares. Public records had not in general been investigated by taxing officers and hence in many localities mortgages were recorded with no attempt to conceal the name or residence of the mortgagee. The amount of credits reached in 1902 is believed to have been a very large part of the total amount of credits taxable, and the method of increasing the credits, by examination of public records indicates that the increase was made up almost wholly of recorded mortgages on real estate.[96]

The seeming great progress of 1902 in the taxing of credits when looked at carefully is seen to be really no great progress at all. The difficulty of listing credits to any great extent continues to be insurmountable.

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[95] *Report of Tax Commission*, 1898, 111.

*1901, $35,598,181; 1902, 73,055,102. Moneys are included in these figures, but they are so small an amount as to be negligible.

[96] *Report of Tax Commission*, 1903, 106.

A majority of the tax commissioners recommend the exemption of credits, upon grounds so often advanced by economists, namely, that the direct taxation of credits as property without a corresponding reduction in the assessment of the property of the debtor works double taxation, producing inequality and injustice, in so far as the tax can be collected; that such taxes are capable of only partial enforcement;that such non-enforcibility works great injustice to those reached by the law, whether the creditor pays the tax or it is shifted to the debtor; that the deceptions resorted to in order to evade the tax have a degrading moral effect upon the community. Judge Gilson and Mr. Curtis, two of the commissioners, condemn taxation of credits with a deduction from the property of the debtor, because, in their opinion, the tax is shifted, along with a commission for risk, to the debtor in the form of a higher interest rate or otherwise, and laws designed to prevent such shifting are impracticable and serve to injure rather than benefit the debtor in whose behalf they are enacted.[97] The argument of the commissioners that a credit is not property and that its taxation therefore works injustice between debtors and non-debtors and also between creditors and debtors who pay the tax and those who do not is exceedingly well put.[98] It is argued that the tax on a credit will be shifted to the debtor, because if the interest rate is not high enough to yield a reasonable income over and above the tax, loanable capital will seek investment in enterprises until the amount of loanable capital is so reduced as to yield as compared with investments in industries a fair income plus the tax. Besides, it is contended, the debtor pays something in the case of loans running over a year or two to insure the creditor against loss in case the tax should be raised. The opinion of the California Supreme Court given in the case of *Hewitt vs. Dean* (91 Cal. 5–12) may be cited in this connection. The Court said, "All experience has shown that the rate of interest is governed by the inflexible laws of trade, and is regulated by the same law of supply and demand as that which governs all other articles of commerce, and that legislatures and

[97] Ibid., 115.
[98] Ibid., 15–19.

constitutional conventions are powerless in their attempts to change this law, that whenever the state imposes a tax upon a commodity the burden of that tax is borne by him whose necessities require him to purchase and not by him who holds it for sale."

The commissioners admit that a tax cannot be shifted to any extent if levied on only a small body of creditors, but maintain that such a condition is exceptional and if the tax is considerable it places a heavy and unjust burden upon those who cannot transfer their capital from the taxed to the untaxed field.[99]

The commission is unable to cite Wisconsin statistics showing that a tax on credits is added to the interest rate. In some localities in which the law taxing credits had been most vigorously enforced in 1902, much greater difficulty than theretofore was experienced in obtaining mortgage loans, and interest rates advanced very materially. In some other localities, however, no marked change was discernible. A mass of Wisconsin mortgage statistics now awaiting interpretation will perhaps throw some light upon the question. In supporting their contention as to shifting, the majority of the commission placed chief reliance upon the conclusion of Professor Plehn of California, set forth in the *Yale Review* for May, 1899, which conclusion is, however, illogical. Professor Plehn compares the interest rates on first class mortgages with those on first class commercial paper in the city of San Francisco between January 1, 1880, the time when the constitution was changed so as to tax mortgages as an interest in the property mortgaged, and October 1, 1898. The average rate on mortgages, subject to taxation, was 6.81 per cent; on first class commercial paper, practically untaxed, 4.73 per cent. The average rate of taxation was 1.7 per cent. The excess of the difference between the two rates over the tax Professor Plehn says is the cost of shifting.[100] Such a comparison cannot, however, be trustworthy, because there are vast differences between mortgages, which are long time loans, and commercial paper, which represents short time loans. Probably the tax is shifted, but proof of it is still lacking. On the other hand,

[99] *Report of Tax Commission*, 1903, 121-123.
[100] *Report of Tax Commission*, 1903, 127-130.

conditions in the national money market may determine interest rates and the tax may have no influence upon them. The problem is still unsolved, nor is it easy of solution, because of the myriad of factors involved.

The argument is advanced by the commissioners that even if shifting could be prevented a tax on credits would, through a diminution of loanable capital, make credits dear and thus injure the enterprising farmer who is improving his property or seeking to enlarge his farm by purchasing more land, which he could cultivate profitably, also the enterprising merchant or manufacturer, and the would-be builder of a cottage home. Such people are benefited by cheap credits, which if easily obtainable promote industry, increase production, obviate the necessity of forced sales, and so keep up prices. It is contended that a tax on credits has social disutility because it makes credits dear.[101]

A further objection to the taxation of credits is said to arise from the fact that credits held by banks, trust companies, life and fire insurance companies and various other companies are taxed indirectly by special methods, which compel them to pay less than if they were taxed directly. Besides, the credits, except mortgages, of non-residents, are exempt. In order to tax all credits alike it would be necessary to revise the methods of taxing the corporations named above and this could not be done in the case of national banks, since Congress has permitted only one way of taxing these institutions.[102] Besides bank deposits can be reached only through bank officers, if they are not reported by the depositors, and if bankers gave this information they would violate the confidence of their customers. Furthermore, an investigation made by the commission in 1901 showed that in districts where banks are located the tax rate equals or exceeds the interest paid on deposits that draw interest. Deposits subject to cheque usually draw no interest at all. Hence if the law with respect to the taxation of bank credits were enforced, deposits would be withdrawn and hidden or sent to banks in other states. Wisconsin banks would be destroyed and the business interests of the state would suffer severely.[103]

[101] *Report of Tax Commission*, 1903, 135.
[102] Ibid., 137-138.
[103] *Report of Wisconsin Tax Commission*, 1903, 135.

In conclusion the majority of the commissioners said, "The credit tax is not a tax on property, but a mere fiction specially enacted for that purpose. In its relation to the general property system it has no logical connection; it is an excresence, a monstrosity, having no basis in economic truth or in substantial justice, working only wrong and injury to individuals and disadvantages to the people as a whole."[104]

Mr. Haugen, the other commissioner, dissented and his speech before the assembly committee on taxation killed the "credit exemption bill," which passed the senate in 1903.[105] Mr. Haugen showed that the bill would take off the assessment rolls $73,000,000 directly and since if other credits were exempt the United States Statutes and the Wisconsin rule of uniformity would forbid the taxation of banks,* and consequently over $100,000,000 would be subtracted from the tax rolls; hence at a tax rate of 1.3 per cent about $1,300,000 would be added to the taxes of people whose property is not in the form of credits. He argued that the bill would exempt a favored class from all public burdens. The bill, he affirmed, was inconsistent, since it did not propose to exempt moneys. As credits are taxable at the situs of the owner, capital outside of the state will compete with that in the state and thus the interest rate will be kept from rising. Mr. Haugen is wrong in his contention that the rule of uniformity would forbid taxation of banks in case credits should be exempted, hence the $1,300,000 above is probably too high, about $200,000 too high. Mr. Haugen is confident that the tax on credits can be administered with reasonable success, and perhaps with assessors independent of the people whom they assess and whose tenure of office is dependent upon a faithful and thorough discharge of their duties such an administration might

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[104] Ibid. 140.

[105] This was Senate Bill 342, 1903. Mr. Haugen's argument is published in pamphlet form. Haugen, Nils P., *The Exemption of Credits*, (Madison, 1903).

*In 1881, in the case of *Ruggles vs. City of Fond du Lac* the Supreme Court of the State held bank stock to be a credit from the point of view of the stockholder. Hence from such stock a payee might subtract bona-fide debts. Any other construction it was held would invalidate the tax on national banks, since it would work a discrimination against moneyed capital in the form of national bank stock, which discrimination is forbidden by the United States Law permitting state taxation of national banks. *53 Wis.*, 436.

See also *113 U. S.*, 689, and *166 U. S.*, 440 (cited by Mr. Haugen).

be possible, but in the opinion of the writer it is extremely doubtful. If the proposed constitutional amendment to permit taxation of incomes, privileges, and occupations is endorsed by the legislature of 1907 and receives the sanction of the people Wisconsin may substitute an income tax for the tax on credits.†

From 1849 to 1850 credits were taxable in Wisconsin without any deduction of debts. In the latter year a law allowing the deduction of bona-fide debts from the value of personal property was enacted.* This law was repealed in 1852 and in 1858 deduction from credits was allowed. A law of 1905 exempts, "so much of the debts due or to become due to any person as shall equal the amount of bona-fide and unconditioned debts by him owing."[106]

In Wisconsin up to 1903 mortgages were taxable as personal property and no deduction was made from the value of the property mortgaged. There was double taxation of mortgages. By a law of 1903 it is provided that mortgages shall be taxed as an interest in the property mortgaged. Either the mortgagor or the mortgagee may pay the tax, but the latter is responsible for its payment. The mortgaged real estate is taxable at its full value less the amount of the mortgage, unless the mortgagor chooses to pay a tax on the full value, in which case the mortgage is exempt. The tax on the mortgage is a lien on the property and may be paid by the mortgagor, in which case, unless he has agreed with the mortgagee to pay the tax, the amount of the tax with interest at the rate specified in the mortgage constitutes a legal offset in favor of the mortgagor against the indebtedness secured by the mortgage. Mortgages held by corporations exempt from the general property tax are not taxable under this law.[107] A mass of mortgage statistics gathered by the tax commission show that in nearly every case the mortgagor agrees to pay the tax.

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† The amendment was endorsed by the legislature of 1907.

* In 1860, Governor Randall protested against deduction of debts from personal property, since no deduction was allowed from encumbered real estate. *Governor's Message*, 1860, 6.

[106] *Laws of 1850*, ch. 267; *Laws of 1852*, ch. 462; *Laws of 1858*, ch. 115, sec. 1; *Laws of 1905*, ch. 214.

[107] *Laws of 1903*, ch. 378.

Two years after its enactment Governor La Follette declared that the mortgage law of 1903 had proved a great disappointment. No statistics could be brought forward, but it was a matter of common knowledge that the rate of interest on mortgages, as well as on other credits, had not declined since the law was enacted. Observations of bankers and others indicated that the rate had risen. The law was declared to be a source of embarrassment to local assessors, as men of small or moderate means naturally object to being taxed for the full amount of their property, when their rich neighbors, whose wealth is largely in mortgages, are exempt. The law of 1903 exempted about $50,000,000 worth of property, according to the Governor, who, standing squarely on the ability principle, declared credits to be a distinct index of wealth and mortgages, which alone of credits go on public record, as the most accessible kind of credits. The exemption of mortgages, it was declared, was unjust and undemocratic and had not, except in very exceptional cases, proved a benefit to the debtor in Wisconsin, but had added to his burden the amount of taxes that the creditor should pay. The Governor recommended the re-enactment of the old mortgage taxation law with a provision that the mortgagor should be saved from double taxation, pending the adoption of a constitutional amendment permitting a graduated income tax.[108]

The law of 1901 prescribing penalties affecting both assessors and persons attempting to influence assessments by bribery and also the law providing for the dismissal from office by a circuit judge of assessors or members of boards of review guilty of misconduct in office have already been noted. Two other important tax laws were enacted in that year. One gives the State

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[108] *Governor's Message*, 1905, 20-21.

In Connecticut any note, bond or other chose in action may be brought or sent to the State Treasurer and a tax of 2 per cent (formerly 1 per cent) on its face value be paid, whereupon the note is declared exempt for five years. Advantage of this provision is generally taken. The low rate seems to effect a taxation of property ordinarily inaccessible. *Industrial Commission*, 1902, XIX, 1039.

The Industrial Commission recommends that notes, mortgages, etc., be taxed at their full value, but at low fixed rates, through appropriate listing and recording systems similar to the Pennsylvania method and as proposed by the New York legislative committee of 1899-1900. *Industrial Commission*, 1902, XIX, 1067.

Tax Commission general supervision of the system of taxation throughout the state, general supervision over assessors and local boards of review, and power to require information relating to assessments and taxation of individuals and corporations. The other law created the office of county supervisor of assessments. Such an officer is elected in each county by the county board, holds office for three years, gives bond for $5,000 to insure a faithful and impartial discharge of his duties, and is under the supervision and direction of the tax commission. Such supervisors have no jurisdiction in cities of 150,000 or over, that is, in the City of Milwaukee. In 1901 also the tax commission was made the State Board of Assessment.[109]

The county supervisors of assessments have been of great assistance to the State Board in its efforts to secure assessments at full values. Their work has brought a greater degree of uniformity into assessments throughout the state. Through their efforts much property that once escaped has been placed on the assessment rolls.[110] The tax dodger, however, is finding a way to interfere with the success of their work. The supervisors use sales of property and corresponding assessments to arrive at correct valuations. The practice of "fixing" considerations in deeds in order to deceive the taxing officers has arisen. Real considerations are made nominal in the deeds. Considerations that are really $6,000 are inserted in the deed as $4,000. A supervisor told the writer that this practice is fast making it necessary for the supervisors to actually view property.

The laws of 1901 have effected considerable progress in the direction of uniformity in the assessment of property at its true cash value throughout the state, and have also accomplished much toward a complete assessment of all taxable property. In 1901 the State Board of Assessment increased the assessments of personal property 97 per cent and of real estate 135 per cent over the previous year. The increase in local assessments from 1899 to 1902 was of personal property 137 per cent, of real

[109] *Laws of 1901*, chs. 220, 237, 445.

Local Boards of Equalization: County Boards—county supervisors, clerk, assessors; City Boards—mayor, clerk, assessors; Village Boards—president, clerk, assessors. *Revised Statutes*, 1878, sec. 1060.

[110] *Report of Tax Commission*, 1903, 5, 6, 8.

estate 105 per cent.[111] Much credit for this great improvement is to be given to the county supervisors of assessments. Governor La Follette said in 1903, "Since public interest was first aroused on this subject, through the effective direction of assessors by the tax commission and by the supervisors of assessments there has been added to the tax roll more than $50,000,000 of intangible personalty in the form of notes, bonds, mortgages and other credits."[112] The significance of this apparently great advance has already been discussed. Wisconsin's system of taxation is still far from being perfect, but the right direction in efforts at reform has been taken,—the direction toward centralized control and administration by skilled officers who will be independent of the people whose property they assess.

D. SALE OF LANDS FOR UNPAID TAXES AND THEIR REDEMPTION

The first state tax law, the law of March 29, 1849, made the following provisions respecting the sale of lands for unpaid taxes. All lands returned to a county treasurer, as provided by law, upon which taxes, interest, and charges shall not be paid by the first of February following their return shall be subject to sale at public auction on the second Tuesday of April immediately following. The sales shall be continued until so much of each such parcel of land is sold as to pay the taxes, interest, and charges due on it. In each case sale shall be made to the person offering the amount of taxes, etc., due, for the least quantity of the parcel. If no such bids are received the whole parcel shall be sold. If any parcel cannot be sold for the amount of taxes, etc. the treasurer shall bid it in for the county at that price. The former owner or occupant of any land sold for taxes, or any other person, may at any time within three years from the date of the certificate of sale redeem such land or any part of it or interest in it, by paying to the clerk of the board of supervisors of the county in which the land was sold, for the use of the purchaser, his heirs, or assigns, the purchase

[111] Ibid., 17, 33.
[112] *Governor's Message*, 1903, 9-10.

price and all subsequent charges, or such proportion thereof as the part or interest redeemed shall amount to, with interest on the total amount at the rate of 25 per cent per annum from the date of the sale. In 1891 25 per cent was changed to 15 per cent.[113] If the land is redeemed within six months after sale interest shall be paid for six months. This provision was inoperative between 1889 and 1891.[114] In addition to the above mentioned payments, those redeeming lands must pay all the taxes and charges imposed upon such land or part thereof or interest therein, since the date of sale, together with interest at 12 per cent. The rate was made 15 per cent in the case of city land, in 1899.[115] In 1859 it was provided that the purchaser or any one holding under him, of lands sold for taxes may at any time within three years from the date of sale sue for a bar to the reclaiming of the land by the former owner, whose only defense lies in showing that the tax for which the land was sold was paid or was illegally assessed, or in recompensing the purchasers as provided by the law of 1849.

The lands of minors or any interest that they may have had in lands sold for taxes may be redeemed at any time during their minority and one year thereafter. Lands, or an interest in lands of idiots, insane persons, and married women may be redeemed at any time within five years after the date of sale.[116] Widowed women were added to this latter category by a law of 1867. In 1852 it was provided that in cases of lands sold for taxes prior to May 5 of that year, the deed for which should be executed subsequent to that date, the original patentee or his assignee might redeem such land by paying to the holder all taxes, costs and fees disbursed by him on account of the land together with interest at 25 per cent, within one year after the recording of the deed.[117]

By a law of 1866 it was provided that when a lot or tract of land has been sold for taxes for five successive years and has been bid in to the county, the title thereto shall vest in the

[113] *Laws of 1891*, ch. 182.
[114] *Laws of 1889*, ch. 415; *Laws of 1891*, ch. 182.
[115] *Laws of 1899*, ch. 94.
[116] *Law of March 29, 1849*, secs. 85, 86, 104.
[117] *Laws of 1852*, ch. 503.

county and such land while owned by the county shall not be taxed. This law does not apply to the lands of minors or insane persons nor did it apply to any certificate then issued until two years after its passage.[118]

The tax commission declared in 1898 that the practical period of six years for redemption and the low rate of interest on tax certificates interfered seriously, in some localities, with a prompt and efficient collection of taxes. The law allowed three years for redemption, but the tax deed may be set aside for any mere technical defect, and usually there is no difficulty in finding such a defect. Hence the period of redemption is virtually extended three years until through the statute of limitations the tax deed becomes absolute. Many northern counties were bordering on bankruptcy because of the difficulty that they experienced in collecting taxes and the opinion prevailed in these counties that a higher rate of interest on tax certificates would both cause a higher percentage of the taxes to be paid and would make certificates more saleable. Many of these counties found it difficult to dispose of their certificates. In October 1898 the counties held in certificates $1,350,796.71 and yet many counties had sold theirs at auction. Price county sold $35,000 worth at 10 per cent; Taylor county, a large amount at 22 per cent; Iron county, $30,000 worth at 12 per cent.[119] Many of these certificates pertained to lands that had been stripped of their valuable timber and were practically abandoned by their owners, hence it seems doubtful that a less liberal redemption policy would have benefited the counties.

E. LOCAL TAXATION AND LOCAL EXTRAVAGANCE. THE RELATIONS BETWEEN STATE AND LOCAL TAXES

Local extravagance has obtained in Wisconsin from the Territorial days and still obtains. Sufficient has been said in this regard of the Territorial period in division I. of this chapter. From the beginning of Statehood the people have complained

[118] *Laws of 1866*, ch. 132.
[119] *Report of Tax Commission*, 1898, 103-105.

more or less of burdensome taxes. The complaint was decidedly pronounced in the early days and it is easily shown that the burden was due to excessive local taxes. In 1852 the Governor pronounced the system of town and county government then obtaining too expensive and hence necessitating a burden of taxation that demanded a radical change. The commission system of Ohio and Indiana was recommended as being much less expensive, less complicated and more efficient.[120] By 1858 the condition had become worse. Constant complaints were made of excessive taxation in cities and incorporated villages. In many of the larger cities taxation was actually oppressive. In the opinion of the Governor, Boards of Trustees of villages and Common Councils of cities had too great powers in the matter of expending public money. The ease with which in the early stages of industry money could be raised on city bonds led to extravagant expenditures and too frequently for purposes other than the payment of necessary expenses or the making of improvements. The faithlessness and extravagance of public officers were declared to be becoming proverbial. In cities there was in some cases a lavish expenditure of public funds for unauthorized purposes and in fulfillment of oppressive and fraudulent contracts. The Governor declared that private corporations are unsafe depositories of public credit and denounced the practice of permitting towns, counties, cities, and villages to lend their credit to private corporations organized to build canals, railroads, plank roads, or to engage in other enterprises.[121] This was forbidden to the state and when one looks back upon the corruption that has marked the management of the state lands, the trust funds and the land grants to railroads, the conclusion is inevitable that the people of Wisconsin may well be glad that the framers of the Constitution and the people who endorsed it discerned a great object lesson in the disastrous experiences of the older states in the period of public improvements preceding the panic of 1837. In the years from 1854 to 1858 the legislature authorized the issue of local bonds to the amount of $11,489,000; the total amount authorized up to 1858

[120] *Governor's Message*, 1852, 9.
[121] *Governor's Message*, 1858, 29.

was fifteen millions, but not all of this was issued.[122] In these figures there is a very strong suggestion of what would have befallen the state, if the constitution had not forbidden expenditures by the state for internal improvements, expenditures either directly or indirectly.

The amount of local indebtedness in 1875 and 1900 may be given at this point. In 1875 the debt of the counties was $3,557,701; the debt of cities, towns, villages and school districts was $7,950,572. In 1900 the counties owed $2,588,681; the cities, etc., $14,771,366.[123]

The credit system of government was responsible in the early days for much of the waste and extravagance that characterized local administration. Governor Harvey in 1862 affirmed that the practice of allowing the circulation and sale of government orders was subversive of an efficient and honest administration of public funds.* He declared that the credit system of managing public expenditures, then still obtaining in the counties, towns, cities, and school districts, with its incident confusion of accounts almost invariably served as a cover to speculation in public funds. In the chapter on Public Debt and State Credit it is noted that state orders circulated up to 1858. Notwithstanding that the state tax was very light in the years 1859, 1860, and 1861, the people had experienced no appreciable relief from the burdens of taxation. In the years 1857 and 1858 the state tax was very high. The ratio of county to state taxes in the period 1857 to 1860 was 2.189; of town to state taxes 2.29.

State Tax (average 1857–60)	$303,005.08
County taxes (average 1857–60)	663,278.12
Town taxes (average 1857–60)	693,881.63
School District taxes (average 1857–60)	551,422.98
Road taxes (average 1857–60) (estimated at 5 mills)	904,510.08
Total	$3,116,097.89

[122] Ibid., 31.

[123] *Secretary of State's Report*, 1875, 42; ibid., 1901-02, 353, 369.

* In 47 of the 56 organized counties of the state in the four years 1857-60 county orders, according to the reports of the clerks of county supervisors, had ranged in value from 62 1-2 per cent to par. The average value for the 47 counties was 81 2-3 per cent. School district orders probably did not have

In some of the cities and in the newer sections of the country the tax burden was even heavier than indicated by the figures above. In one northern county having a population of 828 in 1860, the total taxes in 1859 were $43,760, of which $4,000 went for expenses of tax sales. In 1861, the taxes in this county amounted to $19,395, of which $6,000 was spent in connection with tax sales. The practice of confiscating lands through taxation obtaining in this county serves to illustrate the same practice in very many other counties, especially new counties. An attempt was made to justify this policy and practice by pleading that non-residents had no rights that residents were bound to respect. This struggle between the resident and the non-resident is an old one in Wisconsin, and is still going on in the northern part of the state. This is a struggle that took on a very important aspect in the early history of New Hampshire involving an assertion of both the benefit theory and the ability theory at the same time. In Wisconsin many thousand dollars worth of property are still confiscated annually through taxation. The greater part of the lands sold for taxes in the northern part of the state are sold because the owners are obliged to give them up, as in two or three years the taxes on the lands would amount to more than they are worth. Special assessments for street improvements often result in practical confiscation.[124] In 1862 it was pointed out that this policy of confiscation brought loss to the state because many holders of state lands were obliged because of excessive local taxation to give them up. The books of the school land office show cases in which lands were taxed at the rate of 7 per cent of their value, determined on the basis of the average assessed valuation of property in the county in which they are situated. The injustice of the policy reacted upon the permanent interests of the counties. Their basis of taxation was being constantly reduced; immigration was discouraged; people were driven from within their borders. Such a policy promotes no public interest and benefits only the few who live by public office and speculators in tax titles.[125]

so high a rating as county orders. It is evident that the local units suffered a loss of 18 1-3 per cent on all taxes except State taxes, for which warrants were not receivable. *Governor's Message*, 1862, 16-17.

[124] *Report of Tax Commission*, 1898, 92.

[125] *Governor's Message*, 1862, 14-16.

Nearly every, if not every governor's message refers to the great burdens of local taxation. The following figures give some idea of the relation between state and local taxes in the years 1873 to 1877 inclusive. The figures for the local taxes do not include special assessments, nor was the state tax as large as the figures indicate, because in many years taxes for interest on state loans to the counties, towns etc., are counted as state taxes.

	State Tax	Local Taxes
1873	671,582	7,117,493
1874	526,606	7,169,642
1875	589,789	8,414,893
1876	660,808	7,436,627
1877	554,911	7,476,717

The state rate in 1877 was .00131; the local rate was .01765. The population in 1880 was 1,315,480. In 1878 Secretary of State Warner wrote, "It would seem that a state with a population no greater than ours, at peace with all the world ["in a time of peace" would have conveyed the idea and would not have been ridiculous], engaged in no great work of internal improvement, and with a small state debt, ought to govern its citizens and protect their rights without such excessive levies."[126] In 1901, 3 per cent of the taxes levied went to the state; 22 per cent to the counties;and 75 per cent to the cities, villages, and school districts. In comparing state and local taxes it should be borne in mind that the state derives a very large revenue from public service corporations. In fact, the state has levied no tax for general purposes since 1884, except in 1897 and 1898.

The tax commission in 1898 made some very significant and important observations apropos of local taxation, when it pointed out that the practical importance of local taxation is very far from being appreciated. Of the twenty millions paid annually in taxes in Wisconsin it is probable that at least one million could be saved by better and more economical methods. "The wastefulness and looseness of the present system are such as no business man would tolerate in his own affairs." That the in-

[126] *Secretary of State's Report*, 1878, 34.

telligence and good sense of the people allowed such abuses to continue could be accounted for only on the theory that actual conditions were not known or understood.[127] Extravagance in local public finance in Wisconsin arises through dishonest or incompetent officers, through the purchase of stationery at extravagant prices, through the county order system. Orders are issued in advance of the collection of revenue. Up to 1899 they could not draw interest and were therefore discounted. Consequently a county was often obliged to pay $100 for what would ordinarily cost $85 or $90.[128]

Of the many suggestions offered for the remedying of excessive taxation the tax commission of 1897 recommended but three as free from objection.

(1) The rate of town taxes, exclusive of state, county, and school taxes, should be limited to 2 per cent of the assessed valuation as fixed by the preceding county equalization, and the county board should be prohibited from materially raising or lowering the aggregate valuation of the county.

(2) The statute conferring the powers of villages on towns containing one or more unincorporated villages with a population of not less than 1,000 should be repealed. The effect of this statute has been to encourage certain unincorporated villages in the northern part of the state to spend large sums on electric lighting plants, waterworks, street improvements, police and fire departments and other local improvements without much reference to the legitimate needs of the communities. It is quite natural that the people in the villages, who are a majority of the electors in their respective towns, should be disposed to vote such improvements, when the whole town is to bear the expense. Such a condition entails extravagance and is unjust to landowners, whose holdings are miles from the village benefited. In one town in which the average town taxes levied annually amount to about $30,000, $4,500 was paid for hydrant rental; large sums were expended for electric lights and for street improvements; an expensive fire department was maintained; a town hall costing $30,000 had been built. Such a

[127] *Report of Tax Commission*, 1898, 9.
[128] Ibid., 93-95.

condition is unjust either on the ground of the benefit theory of taxation or the ability theory, because justice demands that the latter be conditioned and qualified by the principle of economic interest.

(3) The advertisement of the expiration of the time to redeem lands sold for taxes should be dispensed with and the rate for advertising the delinquent list should be reduced. A law of 1905 provided for some advance along this line of retrenchment by prescribing that not more than twenty-five cents shall be paid per lot or tract of land advertised for sale for delinquent taxes when the list contains not more than 1,000 entries and not more than fifteen cents for each additional lot or tract.[129] The expense of advertising the expiration of the time for redemption is very great. In 1897 it was $21,000. It was the opinion of the tax commission of that year that such advertising does not serve a public purpose sufficient to warrant this great expense. Any person who has forfeited land for unpaid taxes may learn of the expiration of the time for redemption, from the proper county clerk. The fact that Milwaukee City, raising nearly one-fourth of the taxes of Wisconsin, advertises neither delinquent property nor the expiration of the time for redemption and that no complaint is made suggests that the entire expense of such advertising might be eliminated. In Milwaukee county the printing of descriptions of lands to be sold for taxes costs three cents each, while in sixty counties twenty-five cents was paid; two counties paid twenty-three cents; two, thirty cents; one, fifty cents. Evidence was submitted to the commission indicating the existence of pools among newspapers in certain counties to get a high price for this printing. The cost of this advertising is paid by the purchaser of the tax certificate, but many counties are obliged to buy their own certificates or to sell them below par.[130]

In cities the maximum tax rate allowed by law is now 3½ per cent; it was formerly 3 per cent (a). The county limit has been reduced from 3 per cent to 1½ per cent (b). The town limit has been reduced in the same way. The electors however may

[129] *Laws of 1905*, ch. 413.
[130] *Report of Tax Commission*, 1898, 96-102.

vote an additional 1½ for roads or bridges (c). The limit placed on school districts is 2 per cent: it was formerly 5 per cent (d).

In the Territorial period and in the early years of Statehood many counties were very remiss in the matter of paying their full shares of the taxes levied by the central government. The state inherited a territorial arrearage of $10,321. In 1857, $36,000 remained due and unpaid; in 1858, the panic of 1857 had increased the amount to $78,000; in 1862 it was only $13,000, which rose to $45,000 in 1863. By a law of 1858 counties remiss in the matter of paying state taxes are to be charged 25 per cent interest on the amount owed and while indebted to the state shall draw no money from the state treasury. In 1859 the penalties for the year 1858 were refunded.[131]

F. GENERAL PROPERTY TAXES LEVIED BY THE STATE*

1848—A tax of 4.5 mills for general purposes.†
1849—A tax of 4 mills for general purposes.
1850—A tax of 2 mills for general purposes. (Ch. 224.)
1851—A tax of 3 mills for general purposes. (Ch. 332.)
1852—A tax of 3.3 mills for general purposes.
A tax of .5 of 1 mill on account of State loan.
A total tax of 3.5 mills. (Ch. 463.)
1853—A tax of 5.6 mills for general purposes.
A tax of .4 of 1 mill on account of State loan.
A total tax of 6 mills. (Ch. 84.)
1854—A tax of $225,000 for general purposes. (Ch. 73, sec. 8.)
1855—A tax of $350,000 for general purposes. (Ch. 68.)

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[131] *Secretary of State's Report* for the several years. *Laws of 1858*, ch. 152, sec. 5. *Laws of 1859*, chs. 29, 67, 96.
(a) *Laws of 1899*, ch. 262.
(b) *Laws of 1895*, ch. 293. *Laws of 1903*, ch. 439.
(c) *Laws of 1895*, ch. 293. *Laws of 1903*, ch. 439.
(d) *R. S.*, 1898, sec. 4309. *Laws of 1903*, ch. 439.

*For an analysis of these taxes see chapter on Receipts and Expenditures.

† For absolute amounts see chapter on Receipts and Expenditures. Taxes for general purposes were apportioned among the counties on the basis of general property valuations.

The tax was high this year because it had been discovered by the Finance Committee of the Senate that the state was behind $176,655.

1856—A tax of $300,000 for general purposes. (Ch. 131.)

1857—A tax of $300,000 for general purposes. (Ch. 79.)

1858—A tax of $350,000 for general purposes. (Ch. 121.)

$250,000 for the expenses of the year 1859; $100,000 for deficiencies.

A 1-5 of 1 mill tax for interest on bonds. (Ch. 20.) This tax was levied in the years 1859, 1860, 1861 and 1862 also.

1859—A tax of $150,000 for general purposes. (Ch. 111.)

1860—A tax of $150,000 for general purposes. (Ch. 267.)

1861—A tax of $200,000 for general purposes.

1862—A tax of $150,000 for general purposes.

1863—A tax of $75,000 for general purposes.

A tax of $200,000 for families of volunteers. (Ch. 139.)

1864—A tax of $200,000 for families of volunteers. (Ch. 349.)

A tax of $235,000 for general purposes. (Ch. 450.)

1865—A tax of $350,000 was authorized or so much of that sum as the Governor, Secretary of State, and State Treasurer might decide was necessary for the expenses of 1866 and the deficiency of 1865.

1866—A tax of $100,000 for general purposes. (Ch. 98.)

An annual tax sufficient to pay the interest on the amount of the 5 per cent fund withheld by the federal government as an offset to an equal amount for which the Territory of Wisconsin became responsible on account of the Rock River Canal Lands. (Ch. 79.)

The amount withheld was $101,262.33.

1867—A general tax of $475,000. (Ch. 114.)

A tax of $7,303.76 for the University. This was to be levied annually for ten years.

1868—A total tax of $259,000.90. (Ch. 112.)

1869—A total tax of $293,132.54 (Ch. 97.)

The Secretary of State was authorized to add to a tax pro-

vided for by law, when the tax authorized is insufficient to balance the appropriations by the legislature and existing laws. (Ch. 153.)

1870—A general tax of $480,000. (Ch. 119.)

1871—A general tax of $340,000. (Ch. 125.)

1872—A general tax of $500,000. (Ch. 98.)

A tax of $10,000 for the University to be levied annually. An attempt to justify this tax was made by claiming that the University Fund had suffered because of the sale of University lands at low prices in order to induce immigration and further settlement by actual settlers. It is true that the Fund suffered because of premature sales at low prices, but there is a large element of fiction in the rest of the claim.

1873—A general tax of $321,110 (Ch. 225.)

1874—A general tax of $287,525 (Ch. 320.)

1875—A general tax of $236,126 (Ch. 253.)

1876—A general tax of $383,829 (Ch. 328.)

A tax of 1-10 of 1 mill for the University to be levied annually.

This tax amounted to something over $40,000.

1877—A general tax of $263,875 (Ch. 254.)

1878—The annual tax on account of the withholding of part of the 5 per cent fund was made $7,088.66.

A general tax of $405,000 (Ch. 294.)

1879—A general tax of $248,000 (Ch. 250.)

1880—A general tax of $453,000 (Ch. 264.)

1881—A general tax of $240,000 (Ch. 334.)

1882—A general tax of $500,000 (Ch. 312.)

1883—A tax of $110,000, (*Laws of 1883* Ch. 195.)

1884—A tax of $240,000 (*Laws of 1883* Ch. 195.)

This tax of $240,000 was not levied. The surplus in the treasury, together with increased revenues from railway, insurance, telegraph and telephone companies made a tax for general purposes unnecessary in 1884, which marks a cessation in the practice of borrowing from the trust funds to make up deficits.[132] The practice was resumed in 1895. Except in the years 1897 and 1898 there has been no state tax for general

[132] *Secretary of State's Report*, 1883-84, 30.

purposes in recent years. Taxes, however, for the following purposes have been levied,

1. Interest on certificates of indebtedness, representing loans from the trust funds to towns, etc.
2. Common Schools (the one mill tax.)
3. University.
4. Free high schools.
5. The fifth normal school.
6. Support of patients in the State Charitable Institutions. (Each county pays for its residents only.)

The only taxes, except in 1897 and 1898, since 1884 have been for education, and if the education funds and lands had been conserved these also would be unnecessary.

1885—An annual tax of 1 mill for the benefit of the school fund income. (Ch. 287.)

An annual tax of $10,000 for the fifth normal school. (Ch. 364.)

1889—A tax of $200,000 for University buildings (*Secretary of State's Report,* 1889–90, 4.)

A special tax of 1-10 of 1 mill to be levied for 6 years, for university buildings. (Ch. 29.)

1893—An annual tax of 1-20 of 1 mill for normal schools. (Ch. 185.)

1895—An annual tax of 1-5 of 1 mill for normal schools. (Ch. 91.)

1895—A tax of 1-10 of 1 mill for three years, beginning in 1897, for the Historical Society building. (Ch. 298.) Made seven years in 1897 (Ch. 237.)

In 1899 this tax was discontinued (Ch. 296), and $500,000 was appropriated from the general fund, and $15,000 annually for the maintenance of the building.

1895 (Ch. 241.), 1897 (Ch. 284.)—An annual tax of 1-5 of 1 mill for the University.

1897—An annual tax of 1-10 of 1 mill for normal schools.

1897—A tax for general expenses of 3-10 of 1 mill in the years 1897 and 1898. (Ch. 148.)

1899—Provision was made for specific taxes for the University and the normal schools, in lieu of the mill taxes, $268,000

for the University; $180,000 for the normal schools. (Ch. 170.)

1901—The University tax was made $289,000. (Ch. 322.)

Normal school tax increased to $215,000 . (Ch. 370.)

1903—The University tax was made $291,000. (Ch. 135.) An appropriation was made for the common school fund of a sum equal to 7-10 of 1 mill on the valuation of all property exclusive of the property of corporations that pay special taxes. This appropriation comes from the corporation taxes to the extent of $200,000 and the balance comes from a general tax. This appropriation is an annual one; this is in lieu of the one mill tax. (*Laws of 1903,* Ch. 313.)

An additional tax of $485,000 for the University, and a tax of $7,500 for two years for the University library.

1905—An annual tax of 2-7 of 1 mill for the University. (Ch. 320.)

1907—Annual appropriation of $20,000 for educational extension and correspondence teaching. (Ch. 413.) Annual appropriation for four years of $100,000 for women's building and men's dormitories. (Ch. 428.)

CHAPTER VIII

STATE TAXES FOR EDUCATION*

I. Free High Schools

The free high schools of the state are for the most part maintained partly by the state and partly by the local administrative units. Some of the free high schools do not accept aid from the state. The free high school law of 1875 provided that when a high school had been established and maintained for thirteen weeks or more in any year in any high school district, such district was entitled to receive from the state a sum equal to one-half of the amount actually expended for instruction in the school, but no town, city, or village was to receive more than $500 a year, except that high school districts having a population of more than 3,000 were entitled to $100 additional for each additional 3,000 inhabitants. The amounts raised locally for high schools are exclusive of the amounts required by law to be raised for common schools. High school districts are permitted to make arrangements for the education of their boys and girls with academies and colleges having preparatory departments, and to receive aid from the state in the same manner and to the same extent as they would if they established high schools. The law of 1875 provided that a sum not exceeding $25,000 is to be appropriated annually from funds not otherwise appropriated to aid in high school education, but each year the Secretary of State is to add to the tax apportionments of the several counties sums equal to the amounts granted by the state for free high schools in the respective counties, so that the state aid in form is in reality county aid.[1]

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*See Chapter VII, Section F, for taxes for University.

[1] *Laws of 1875*, ch. 323.

The Revised Statutes of 1878 limited this aid to three years in the case of each school. In 1879 the time was made five years; in 1882, ten years and in 1885 the aid was made annual. In 1899 the maximum amount to be granted to free high schools was made $75,000.[2]

By the law enacted in 1885 aid was provided for free high schools in towns in which there are no graded schools. This aid is the same as that granted to other free high schools and shall not in the aggregate exceed $25,000 a year.*

A law of 1897 providing for the organization of manual training departments in high schools declared that such departments when of approved standing are each entitled to receive from the state, provided that they are maintained for six months in the year, $250 annually, but the total aid so granted is not to exceed $2,500 a year, which sum is included in the state tax levy. An amendment of 1899 provides that not more than twenty schools shall receive such aid and the total amount granted annually by the state is not to exceed $5,000. The additional $2,500 is paid out of funds in the state treasury.[3]

II. County Training Schools and Schools of Agriculture and Domestic Economy

In 1899 county training schools for common school teachers were authorized in counties in which there are no State Normal Schools. Such training school, if of approved character and standing, is entitled to receive from the state annually an amount equal to one-half of the sum expended for the school provided that the school has been maintained for ten months in the year. The total amount paid to such schools annually shall not exceed $2,500, which amount is apportioned annually as part of the state taxes.† A law of 1901 authorizing county boards to appropriate money for the organization, equipment,

[2] *Revised Statutes*, 1878, ch. 27, sec. 496. *Laws of 1879*, ch. 245, sec. 5. *Laws of 1882*, ch. 22. *Laws of 1885*, ch. 420. *Laws of 1899*, ch. 214.

* Aggregate maximum made $50,000 in 1907. *Laws of 1907*, ch. 571.

[3] *Laws of 1899*, ch. 273.

† Not more than twenty are to receive aid. *Laws of 1907*, ch. 601.

and maintenance of county schools of agriculture and domestic economy, in which are to be taught the elements of agriculture, including instruction as to the soil, and plant and animal life on the farm, also a system of farm accounts and domestic economy, provides that such schools, if of approved standing, are entitled to receive from the state one-half of the sum actually expended in support of the respective schools. In 1903 it was provided that state aid might amount to two-thirds of the sum expended and that the school should be conducted for eight months. Not more than $4,000 is to be paid to any one school in any one year.[4]

III. Schools for Deaf Mutes and for Dependent and Neglected Children

In 1885 it was enacted that there should be paid out of the state treasury each year to the treasurer of every incorporated city or village maintaining a school or schools for deaf mutes, under the charge of a teacher or teachers of approved qualifications, to be determined by the state superintendent of public instruction, $100 for each deaf mute instructed for at least nine months in the year next preceding the first of July and a proportionate amount for each pupil receiving instruction for less than nine months. The apportionment for each pupil was increased to $125 in 1893 and to $150 in 1897.[5] Another law of 1885 appropriated $30,000 for a "State Public School" for dependent and neglected children. Children dependent upon public support and over three and under fourteen years of age are receivable into the school. An amendment of 1901 provides for the admission of crippled children under fourteen, who are of sound mind and whose physical defects are such as to admit of proper treatment in the school. Children admitted to the school may be kept there until they become sixteen or longer until good homes can be secured for them. The object of this school, which is located at Sparta, Wisconsin, is to pro-

[4] *Laws of 1899*, ch. 268. *Laws of 1901*, ch. 288. *Laws of 1903*, ch. 143.
[5] *Laws of 1885*, ch. 315. *Laws of 1893*, ch. 305. *Laws of 1897*, ch. 321.

vide a temporary home for dependent children until homes can be found for them in good families. There is an annual appropriation for the payment of the current expenses of the institution.[6]

IV. The One Mill Tax for Common Schools

Since 1885 there has been levied annually a tax of one mill for the benefit of the School Fund Income. Up to 1901 underassessment kept this tax down to about $600,000 and its burden was not felt, but since that year assessments at higher values have increased the amount of the tax greatly. In 1900 it was $630,000; in 1901 it was $1,436,284 and in 1902 it was $1,504,346. In 1902 in many districts no district school tax was levied; the schools were supported entirely by the school fund apportionment and by the corresponding county tax. In some districts a tax was collected and a surplus was the result. Conditions giving rise to surpluses have a tendency to promote waste and extravagance. A large fund tends in many instances to do away with the very desirable local interest that obtains when a community is at least in part responsible for the support of its schools. This argument against too large a school fund it will be recalled was advanced in the state constitutional convention. "The policy of requiring the older and wealthier portions of the state to contribute to the educational expenditures of those less fortunate promotes good citizenship and is socially expedient so long as the contribution is not excessive and can be profitably and economically expended" and only so long. The State Tax Commission in 1903 recommended that the tax be reduced to a definite amount, $700,000, which with the school fund income would make $900,000 and this sum with the amounts raised by the county boards would give $1,800,000. The tax was reduced to seven tenths of one mill in 1903. Of this amount $200,000 is taken from the corporation taxes.[7]

School districts having within their limits a state graded

[6] *Laws of 1885*, chs 377, 457. *Laws of 1901*, ch. 109.
[7] *Report of Tax Commission*, 1903, 39, 43. *Laws of 1903*, ch. 313.

school but no free high school or a high school of equal rank may receive special state aid. Such a district having a school of three or more departments may receive annually from the general fund of the state $300; those having a graded school of two departments, $100. This arrangement does not apply to schools in incorporated cities. The total amount of such aid was made in 1901, when it was provided for, $60,000, but this was raised to $80,000 in 1905.[8] By a law of 1907, $300 is granted to schools of the first grade and $200 to those of the second grade. The maximum aid was made $120,000.[9]

[8] *Laws of 1901*, ch. 439. *Laws of 1905*, ch. 332.
[9] *Laws of 1907*, ch. 375.

CHAPTER IX

TAXATION OF RAILROADS

The first railroad charters granted in Wisconsin were granted by the Territorial Legislature in 1847, but the first line, a short one of twenty miles extending from Milwaukee to Waukesha, was not completed until 1851.[1] Up to 1854 the little railroad property that there was in Wisconsin was taxed locally just as other property was taxed, but in that year the Governor, observing how greatly Wisconsin's development depended upon the opening up of numerous lines of communication and transportation, recommended the encouragement of the construction and development of railroads and other means of transportation and communication by a liberal state policy with respect to such enterprises, including a liberal taxation policy. Accordingly there was introduced in the Assembly a bill to levy in lieu of all other taxes upon the property of railroad, plank road and telegraph companies a gross receipts tax of one-half of one per cent. In the Senate the rate was raised to one per cent and telegraph companies were excluded. It was proposed in the Senate that the tax be one-half of one per cent for state purposes and one-half of one per cent for town and county purposes. It was proposed also that local taxation of lands, depot buildings, and fixtures be continued. The vote on the latter amendment was 13 to 7 against the proposal. The bill as finally enacted into law provided for a tax of one per cent, in lieu of all other taxes upon the property of railroads and plank roads or upon

[1] The companies chartered in 1847 were the Milwaukee and Waukesha, the name of which was changed in 1848 to the Milwaukee and Mississippi; the Lake Michigan and Mississippi; the Fond du Lac and Beaver Dam; and the Sheboygan and Fond du Lac. *Laws of 1847*, 23, 72, 158, 194.

the stock of their stockholders, on gross earnings.* In case only a part of a road lay in Wisconsin the tax was to amount to such part of one per cent of the gross receipts as Wisconsin should be entitled to on a per mileage basis. The roads were required to make reports of their gross earnings before January 10, each year, supported by the affidavit of their respective secretaries and treasurers. In case of failure to so report a railroad forfeited $10,000 for each failure and the Treasurer of the state was to proceed to ascertain the gross earnings as nearly as possible and to levy the tax. If a railroad failed to pay its tax, its property, rights and franchises were to be sold by the State Treasurer, and in addition he might sue for the forfeit. Thus Wisconsin inaugurated a gross earnings tax on railroads, which with modifications obtained until 1903. When once this "infant industry" policy had been adopted the railroads like every other industry fostered by legislation resisted its abandonment even after the conditions that gave it birth had passed away.[2]

In passing it may be observed that there is no little question as to the validity of this law of 1854 on the ground of illegal, unconstitutional enactment. A constitutional rule requires that in its passage through each house "any law which imposes a tax or commutes a claim of the state shall be passed by yeas and nays, which shall be duly entered on the journal of each house and three-fifths of all the members elected to each house shall be necessary to constitute a quorum for the passage of such a law." The original House bill provided for the exemption of plank roads from taxation. The substitute reported by the Judiciary Committee providing for the taxation of railroads, plank roads and telegraph lines passed the Assembly but there is no record in the journal of the yeas and nays having been taken. In the Senate journal there is evidence that the yeas and nays were taken on amendments, but no record of their having been taken on the bill itself. This bill, Assembly Bill 52, was

*This law of 1854 was sometimes spoken of as a law exempting railroads from taxation and of course it did exempt them in part. The railroads were built largely with foreign capital and it was declared therefore to be unjust and unwise to burden them as in many cases with more than half of the taxes of the towns through which they passed. *Milwaukee Sentinel*, Feb. 4, 1854.

[2] *General Laws*, 1854, ch. 74.

passed upon twice by the Assembly and once by the Senate, but in no instance does the record show that the yeas and nays were called and neither is it indicated in the journals that a quorum of three-fifths was present. In each case the vote was taken under the suspension of the rules.[3]

In 1860 in the case of the *Attorney General vs. The Winnebago Lake and Fox River Plank-road Company* the Supreme Court of the state pronounced the gross receipts tax of 1854 unconstitutional and hence in the same year the legislature provided for a license fee of one per cent on gross earnings. Failure on the part of a company to make a report of its gross earnings to the State Treasurer, apply for a license and pay the so-called fee constituted a cause for a forfeiture of its franchise and charter. In 1862 the tax on railroads was raised to 3 per cent.* This resulted from the Governor's recommendation that the rate be increased, as 1 per cent was too low. The average rate on other property was estimated to be 1¾ per cent. In 1861 there were in Wisconsin 863.5 miles of railroad, which the Governor estimated to be worth $14,952,500 or about $15,000 a mile. Their earnings in 1861 were $2,991,558.86, hence their taxes amounted approximately to $30,000. On an ad valorem basis even at 1 per cent they would have paid five times as much. The Governor declared that the roads were rapidly passing into the hands of first creditors at prices that made them the most productive property in the state. The time was said to have passed when it was just and politic to favor the railroads at the expense of the other property of the state. The Governor believed it impracticable, however, to allow local taxation of railroad property, and the unequal earning powers of the roads argued that a tax on earnings was the most equitable tax.[4]

A law of 1871 provided that railroads indebted to towns, cities, or villages should pay an annual license tax of 5 per cent on gross earnings. The additional 2 per cent was credited to

[3] *Assembly Journal*, 1854, 80, 610, 681. *Senate Journal*, 1854, 539, 580, 601.

*In 1897 the rate on plank roads was made 3 per cent. and it was provided that the failure of a plank-road company to make a return of its gross earnings and pay its tax should work a forfeiture of $500. *Laws of 1897*, ch. 317.

[4] *11 Wisconsin*, 37; *General Laws*, 1860, ch. 174; ibid., 1862, ch. 22; *Governor's Message*, 1862, 17-18.

the proper town, city or village and applied to the payment of the bonds issued by the town, or city, in aid of the railroad and to the payment of the interest thereon. Such bonds were not, however, to bear interest or to become payable until they were registered and they were not to be registered until the railroad had been completed to such a point as had been agreed upon between the town, city or village and the railroad company.[5]

In his report for 1873 the Secretary of State made a vigorous attack on the gross receipts tax, declaring it to be in violation of the constitutional rule of uniformity and recommending that the railroads be taxed by the State Board of Assessment on their assessed valuation and at the average rate on the general property of the state. It was estimated that the proceeds of such an ad valorem tax on the railroads would defray all the expenses of the State Government. Just thirty years later this recommendation by Secretary of State Lloyd Breese was enacted into law. The average rate of taxation in Wisconsin in 1873 was figured out to be 2.23 per cent, but it should be borne in mind that property was greatly underassessed. Assuming that the railroads in Wisconsin were worth what they cost, if taxed on the ad valorem basis and at the rate of 2.23 per cent they would have paid over five times as much in taxes as they were paying. Their cost was reported at $61,459,374.81 or $35,566.36 a mile. They paid in taxes in 1873, $210,374.99. If they had been worth only one-half of their cost they would have paid on the ad valorem basis a tax of 7.97 per cent on their gross earnings, whereas they were paying only 3 per cent. The stock and bond method of valuation would have yielded a tax of 13 per cent on gross earnings. Assuming that the roads were worth only the value of their bonds the ad valorem tax would have amounted to over 9 per cent of their gross earnings. If their valuation had been determined by capitalizing their net earnings, $3,830,128.47, at 7 per cent, the ad valorem tax would have yielded an amount equal to 9.94 per cent of their gross earnings.[6] However, as the general property of the State was assessed at only about 50 per cent of its true value the real

[5] *General Laws* 1871, ch. 48, secs. 5, 9.
[6] *Secretary of State's Report*, 1873, 28-30.

average rate was about half of 2.23 per cent and consequently the percentages above should all be divided by two.

The next year, 1874, the rate was raised to 4 per cent and in 1876 a graduated tax was provided for. Companies whose gross earnings were equal to or greater than $3,000 a mile paid a tax of 4 per cent on their gross earnings. Companies whose gross earnings were less than $3,000 but more than $1,500 paid $5 per mile and 2 per cent of their gross earnings in excess of $1,500 a mile. Companies whose gross earnings did not exceed $1,500 per mile paid $5 per mile. This law was a great concession to the weaker roads and was an attempt to equalize conditions with respect to the taxation of railroad property. The scale was not changed until 1897 when it was provided that railroads whose gross earnings equaled or exceeded $2,500 a mile and were less than $3,000 should pay 3½ per cent of their gross earnings. Railroads whose gross earnings equaled or exceeded $2,000 but were less than $2,500 paid 3 per cent. Companies whose earnings equaled $1,500 and were less than $2,000 paid $5 a mile and in addition 2½ per cent of their gross earnings in excess of $1,500. The rate of 4 per cent on railroads whose gross earnings equaled or exceeded $3,000 per mile was continued, also the rate of $5 per mile on companies whose gross earnings were not in excess of $1,500 a mile.[7]

In 1884 it was pointed out by the then Railroad Commissioner, Honorable Nils P. Haugen, that the railroad tax law was faulty in that it did not require the State Treasurer to consult the Railroad Commissioner as to the proper amounts to be paid by the roads, although the commissioner had superior advantages for testing reports made by the companies. There was a very strong temptation for the companies to evade a part of their

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[7] *Laws of 1874*, ch. 315. *Laws of 1876*, ch. 97. *Laws of 1897*, ch. 182.

A law of 1876 entitled "An act to encourage the construction and maintenance of pontoon bridges" required pile and pontoon bridge companies to be licensed and to pay a license tax or fee of 2 per cent of their gross receipts. Such companies were made exempt from all other taxes. *Laws of 1876*, ch. 113. The revised statutes of 1878 provided that railroads operated on pile or pontoon and pile bridges should pay a license tax of 2 per cent of gross earnings. *Revised Statutes*, 1878, ch. 15, sec. 1213. A law of 1891 provided for the same tax on corporations, companies or persons operating or controlling dams, booms, sluiceways, etc. *Laws of 1891*, ch. 424.

tax. When a company's earnings were $3,000 per mile or a little more it was strongly tempted to stretch its mileage so as to make its earnings appear to be below $3,000 a mile. At that time the railroad was its own assessor, since the law did not compel the state treasurer to wait before issuing licenses until he had received the reports of the Railroad Commissioner or to consider those reports in fixing the railroad license taxes.[8] This defect was subsequently remedied, but the state authorities maintain that notwithstanding the railroads have for years systematically defrauded the state by falsifying their reports of gross earnings.[9] The controversy between the state and the railroads turns upon the question whether receipts from certain sources should or should not be included in gross earnings. A special investigation of the matter was begun by the Railroad Commissioner October 1, 1903, and is still being prosecuted. The Commissioner charges that the roads have wrongfully deducted from gross earnings before reporting the same for taxation the following items:

1. Commissions and repayments to shippers on freight traffic.
2. Commissions and repayments on passenger tickets.
3. Expenses of operating hotels.
4. Expenses of operating sleeping cars.

He maintains furthermore that they have failed to report for taxation amounts that are parts of their gross earnings and are derived from the following sources:

1. Credit balances from car mileage.
2. Switching charges.
3. Storage, demurrage and miscellaneous.
4. Rental of tracks and terminals.

Having indicated briefly the points in controversy the writer will now proceed to their elucidation and discussion. The completed investigation which has had to do with the largest ten roads reveals that in the years investigated, 1897 to 1903 inclusive, these ten roads repaid to shippers in the form of commissions and rebates and deducted the same from gross earnings over five million dollars. As these rebates given to meet lake

[8] *Report of Railroad Commissioner*, 1883-84, 13.
[9] *Governor's Message*, 1905, 22-25.

competition and the competition of shorter competing railroads were not accorded to all shippers from the points affected by such competition they were clearly illegal. Other large deductions have been made for commissions to shippers. The beneficiaries of these commissions have been lumber and coal merchants, paper and other manufacturers, refrigerator car owners and owners of so-called "industrial lines," which are no more than systems of side-tracks around manufactories. By dividing a through rate with one of these so-called "industrial lines" a railroad is able to give a disguised rebate. Wisconsin's proportion of the gross earnings of the roads has been reduced also by the deduction of commissions paid to the officers of other lines of railroad. Illegal rebating has operated to cheat not only the small and non-favored shipper but the state as well. Many of the roads have followed the practice of deducting from their gross earnings refunds made to encourage new industries on their lines. The commissioner maintains that when hotels and lunch counters and sleeping cars are operated by a railroad the expenses of their operation should not be deducted from gross receipts, but should be charged to operating expenses. Such deductions have been made by the roads investigated. Discriminating refunds have been made on passenger as well as freight traffic and commissions for business have been paid freely to agents and representatives of other lines and deducted from gross earnings. In railway accounts in recent years the account called "tickets redeemed" has been used to cover up refunds or rebates to shippers, wholesale merchants and manufacturers to recoup them for sums paid by themselves and their employes for passenger transportation. Tickets from Wisconsin to the East and vice versa through Chicago include without extra charge bus transportation from station to station in Chicago. It has been the practice of the railroad companies to make a deduction from their gross receipts of the amount of the transfer company's charge, which deduction it seems to the writer is perfectly legitimate, for the bus line is in so far as the railroad is concerned akin to a rented line. The Railroad Commissioner, John W. Thomas, maintains, however, that when a railroad sells a through ticket, charging only the regular rate,

it has no right to deduct from the transportation so collected any part of the operating expenses of carrying the passenger to his destination as indicated by his ticket. The roads, it seems to the writer, are entirely right also in their contention that receipts from the rental of their tracks to other companies should not be included in gross earnings, as the roads renting the tracks and using them pay the gross receipts tax on business derived from such use. In the opinion of the writer, the commissioner is clearly in the wrong on this point. Two of the large railway companies operating in Wisconsin have from time to time purchased stocks and bonds of other corporations, which stocks and bonds are sources of a large income. The companies have very properly, considering the matter from the economic point of view, excluded this income from their reported gross earnings. It is clear that the companies do not receive this income from their business; why should it therefore be included in the profits of their business? If John Smith held a Chicago and Northwestern bond he was not taxed on it; then why should it be taxed if it were owned by the Chicago, Milwaukee and St. Paul Railroad Company? It is equally clear, however, that the companies have no right to deduct their expenses for advertising, which include salaries and expenses of traveling and other expenses of advertising agents, expenses of bill posting, of printing and publishing time tables for general distribution, printing or advertising matter, advertising in newspapers and periodicals, publishing reports in newspapers, of bulletin boards, cards, cases, dodgers, folders, hand-bills, maps, pamphlets, photographs, posters, etc., premiums and donations to fairs and stock shows, immigration boards, etc. Such expenses, usually paid for in tickets or mileage books amounted in the year investigated to $132,645.92, which should have been included and reported in gross earnings. Demurrage is a penalty imposed upon a shipper who delays a car in loading or unloading beyond a certain fixed period. Some of the roads have included this item in their reports of gross earnings; others have not. As the commissioner contends, it is clearly a part of gross earnings.

At this point it will be well to notice an important decision handed down by the State Supreme Court in 1885 in the case

of the *State vs. McFettridge, State Treasurer.* This decision has to do with both the classification of the railroads for taxation and with the question of the inclusion in gross earnings of moneys received for the use of cars, or car mileage as it is called. A majority of the Court maintained that in determining to what class a railroad belongs for purposes of taxation the state should consider only the number of miles operated and the gross earnings in the year preceding, regardless of the length of time that the road was operated in that year. They contended that otherwise the statute would require a report of the time operated. The construction put upon the statute by the state treasurer may be indicated thus: if a road was operated for only six months in the year and in that time earned $1,500 a mile, it belongs in the $3,000 class. Justice Cassoday upheld this contention, maintaining that the words "per mile per annum" used many times in the law had the same meaning as per cent per annum in commercial law. The Court was unanimous in the opinion that spur tracks should be included in computing total mileage. The rental paid for a leased road it was decided should not be deducted from the gross earnings upon which the license tax was computed. One company issues bonds and with the proceeds builds a railroad; another company rents a railroad already built; one pays interest; the other, rent, which should not be deducted from gross earnings any more than interest should. Apropos of moneys received for the use of cars it was decided that the amount received in excess of the amount paid out for the use of the cars of other companies constitutes a part of the gross receipts upon which the license tax is to be computed.[10] Nearly all of the ten roads investigated have covered up their car mileage balances by including in car-mileage rentals of private cars.

There have been improper deductions, by one company, based on accounting methods that are unfair to Wisconsin. Charges for switching in Chicago are often repaid in whole or in part to the shipper and in making vouchers for these refunds the practice prevailed of charging the amount of the voucher one-half

[10] 64 *Wis.*, 130.

to one of the divisions of the road entering Chicago and one-half to the other, but in deducting the amount of such vouchers from freight earnings, instead of apportioning the deductions according to actual distance or territory over which the service was rendered, the total amount of such voucher for each operating division of the road was divided between the states in the proportion that the earnings of each state bore to the total earnings of the division. Vouchers amounting to many thousands of dollars have been charged to gross earnings in Wisconsin in cases in which no part of the original service was rendered in Wisconsin and hence that state never received any of the original credit connected with such transportation transactions. The officials of the company when their attention was called to the matter admitted readily that Wisconsin had probably been largely overcharged in the apportionment of vouchers of this kind.[11] From the strictly legal point of view the Railroad Commissioner is undoubtedly right in all his contentions, for numerous state courts have decided that income when not qualified in a tax law may be construed to mean that which is received from any service, business, or investment of capital.[12]

Earlier in the history of the administration of the gross receipts tax law differences of construction other than those that now obtain arose between the Railroad Commissioner and the railroads. Some of the same differences obtained then also. The earlier controversy turned upon the inclusion or exclusion of,

1. Amounts received for switching.
2. Amounts received for car-mileage.
3. Amounts received for rental of tracks, yards and terminals.
4. Amounts received from stocks and bonds owned.
5. Amounts received as interest on deposits.
6. Amounts received from loans and discounts.
7. Amounts received from use of elevators and storehouses.

The railroads insisted that they paid out more for car mileage

[11] *Special Report of Railroad Commissioner to the Governor*, March 23, 1905. For amounts that the State claims the companies have withheld, see tables at the end of this chapter.

[12] Vide Cooley: *On Taxation* (1903 ed.), 685.

and switching than they received. They very properly held as they now hold that to tax rentals for tracks, yards and terminals produces double taxation.[13]

As has been noted above the ad valorem tax on railroads was suggested and recommended as early as 1873 but until 1903 the railroads were successful in their endeavors to prevent a change in the methods by which they were taxed. In the thirty years intervening many memorials were presented to the legislature asking and even demanding that the method of taxing railroads be changed. In 1885, D. K. Tenney, who was one of the special tax commissioners appointed in 1867, presented to the legislature a very able memorial in which he contended that the time for favoring the railroads by lightening their taxes had passed and advocated that if any of the roads were still weak and needed preferential treatment that such roads and not all the roads be given such treatment, which it will be recalled had for its purpose the encouragement of railroad construction and development. It is difficult to see, however, how under the state constitutional rule of uniformity and the fourteenth amendment a classification of the roads into weak and strong roads and the application of different methods of taxation could have been effected. Mr. Tenney recommended a tax of $100 a mile and an additional tax of 1 per cent on value.* In 1884 the railroads paid in taxes $719,487. A tax on their earnings capitalized at 6 per cent would have yielded $2,121,459; capitalized at 4 per cent, $1,414,305.[14]

In 1900 the Tax Commission undertook to find out the value of the railroads in the state in so far as possible, and where practicable employed the stock and bonds method, which the rail-

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[13] *Report of Railroad Commissioner*, 1899-1900, 32-33.

*It should be noted that as a remedy for assessment evils Mr. Tenney advocated that there should be a state assessor who should have control of all assessments in the state and should appoint on a basis of non-partisanship and efficiency county and district assessors whom he should have power to remove at will. This state assessor and the county assessors were to give all their time to the work of assessment and special deputies were to be appointed to visit the counties, direct the work and report derelictions of duty and official offenses.

[14] *Wisconsin Miscellaneous Pamphlets*, Vol. 28. 5, 10, 11, of Mr. Tenney's Memorial.

roads attacked vigorously and earnestly as being unsound. They argued that many circumstances in the stock market tend to increase or to depress the price of securities and accordingly the stock and bonds method was not a reliable means of determining value. This method has, however, been upheld by the Supreme Court of the United States.[15] In the celebrated Adams Express Company case Mr. Justice Brewer said, "Substance of right demands that whatever be the real value of any property, that value may be accepted by the State for the purpose of taxation. The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value." The Tax Commission found it expedient to classify the roads in two groups, placing in the first group the large roads having the greater earning power and whose stocks and bonds have a market value, and in the second group the roads having less mileage and smaller earning power. The work of the commission was hampered by the failure of all but five small roads to report the values of their stocks and bonds. Accordingly, market quotations were used and in order to eliminate the affect of certain influences, such as tightness of the money market, manipulation, etc., that might have affected prices temporarily, the highest and lowest market prices for each month were taken for periods of five years, three years, and one year ending December 31, 1899. Of the aggregate values thus obtained Wisconsin's per mileage share was taken as the taxable basis. In the cases of three of the smaller roads in the first group values were determined partly by comparing their bonds with other similar bonds quoted in the market and partly by capitalization of net earnings. In some cases it was impossible to get quotations for three and five years. In cases in which all three averages were obtainable it was found that the one year average was 8.7 per cent higher than the corresponding three year average and the three year average was 6 per cent higher than the five year average. These data afforded a means of determining three and five year averages in cases in which quotations were not sufficient. The calculation of the value of the roads in the second class was by

[15] *State R. R. Cases, 92 U. S.*, 605; *R. R. vs. Backus, 154 U. S.*, 429; *Adams Express Co. vs. Ohio, 166 U. S.*, 185.

the capitalization of income method. It was found that the value of the roads in the first class calculated by the stocks and bonds method was 2.2 per cent less than the value ascertained by capitalizing at 6 per cent their net earnings from operation; therefore the earnings of roads in the second class were capitalized at 3.8 per cent.

On the ad valorem basis and at the average rate on the general property of the state, taking the five year average as a basis, the railroads would have paid in taxes in 1899, $2,516,760.56; on the three year basis, $2,670,940.95; on the one year basis, $2,913,020.56. They paid in license taxes only $1,360,120.14. On the lowest basis they would have paid 92 per cent more taxes than they did pay. The commission did not in 1900 recommend the abandonment of the license tax system, but advised that it be given a further trial with a change in the rates, which they recommended should be from 3 per cent to 5½ per cent. However, they declared that if the gross receipts tax could not be made more nearly equal in its burdens to taxes on property in general they favored an ad valorem tax levied by a State Board and at the average rate of state and local taxes combined.[16]

In 1902 the commission took averages for three, five and seven years preceding December 31, 1901. In the case of bonds held by savings banks, trust companies, and insurance companies and not quoted on the market, comparison was made of the market values stated in the reports of such institutions with the quoted prices of similar bonds, and in every case in which the rate of interest or date of maturity was not precisely the same the lower rate was taken. In this stock and bond calculation the commissioners deducted the value of lands held by the roads but not used in the business and also the value of stocks in other companies, both of which kinds of property were taxed otherwise. The capitalization of earnings method was employed for the 38 roads in the second division. The capitalization method, at 6 per cent, was used also for all the roads. All the calculations were made conservatively. The stock and bonds method

[16] *Report of Tax Commission*, 1901. 95, 96, 101, 104, 111, 162.

taking a seven year average, 1895 to 1901, gave a total value of $217,854,026. The capitalization method, taking the average for eleven years, 1892 to 1902, a period including both panic and prosperous years, gave at 6 per cent, $220,341,950. The average rate of taxation in 1901 was figured out to be 1.28 per cent. Taking the lower valuation of $217,854,026, the railroads would have paid at this rate in 1901, $2,788,531. They paid under the license system $1,600,379. The difference is $1,188,-152.[17]

The figures for 1904 and for 1906, however, indicate that the foregoing calculations were not quite fair to the railroads. The valuation was figured in 1904 to be $218,024,900, which is in accord with the valuations reached in 1902, but the average rate of taxation in 1903 was only a little over 1.14 per cent; in 1905, the rate was a little less than 1.14 per cent and the total valuation was calculated to be $237,239,500. In 1904 the difference between the ad valorem tax and the license tax was only $545,-942; in 1906 it was $645,790. In 1904 the license tax yielded more than the ad valorem tax in the cases of four small roads, and in 1906 in the cases of five small roads.*

Many years prior to 1903, the year of the adoption of ad valorem railroad taxation, it was questioned, as has already been shown, whether the railroads were paying their full share of the taxes levied in the state and figures were adduced showing that they were not. From 1876 to 1899, however, no attempt was made to increase the taxes on the roads. In the latter year a bill was introduced in the legislature to increase the rate to 5 per cent and to abandon classification as Governor Scofield recommended. The bill passed the Assembly but was defeated in the Senate largely, if not entirely, because of the influence of the railroads, which, resisting every step toward a reform in the method or the rate of railroad taxation and at that time thoroughly alarmed, come forward with the proposal that a permanent commission be appointed to investigate the subject of railway taxation, which they said was very complex and required investigation by experts. They urged that during the brief and

[17] Ibid., 1903, 195-204, 216.

*Vide tables at the end of this chapter.

busy term of the legislature, the members, occupied to some extent with their own affairs and responsible for legislation on a large number of subjects, could not give to the subject of railroad taxation the time and attention demanded by its intricate character and great importance. The accredited representatives of the railways declared that they would acquiesce in the findings of such a commission, even if such findings showed that the railroads were not adequately taxed. The commission was provided for and appointed. Thus in 1899 did the railroads prevent legislation to increase their taxes, but what is vastly more important, thus did they pave the way for the adoption of the ad valorem system, to which they were most opposed.

At the beginning of the legislative session of 1901 the Tax Commission made a report to the legislature that seemed to show that if the railroads were taxed on the ad valorem basis at the average rate of taxation on other property in the state they would pay into the state treasury a million dollars more than they were then paying. A half a million was probably correct. By means of a powerful lobby the railroads defeated the bills prepared by the commission and consequently reform was delayed for two years more. The companies prosecuted a protracted and extensive campaign to secure the election of a legislature that would ignore the recommendations of the commission and at the beginning of the session of 1903 they openly made preparations for continuing their fight against increased taxation. Fortunately, however, the opposition of the railroad lobby became diverted in part to a fight against state regulation of services and rates and the ad valorem tax bill became a law.[18] This law of 1903 provides that railroads shall be taxed on the true cash value of their real estate, rights of way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises, and personal property used in conducting their business; in short of all their property used in the business of railroad transportation. Real estate not adjoining their tracks, stations or terminals—an amendment of 1905 added grain elevators and coal docks not used exclusively by the railroads in carrying on

[18] Vide *Governor's Message*, 1905, also *Governor's Message*, 1899, 10.

their business—not necessarily used in the operation of their roads are taxed as is the property of individuals. Any other method of taxing such property not an integral part of the roads would contravene the fourteenth amendment to the Constitution of the United States. All other property of railroads is taxed at the average rate of taxation on the general property of the state as nearly as such rate can be ascertained. This rate is obtained by dividing the aggregate tax throughout Wisconsin for state, county, and local purposes levied on the general property of the state, not including special assessments for local improvements, by the aggregate true cash value of the general property of the state upon which taxes are levied. Railroad property used for transportation purposes is exempt from all other taxes, except that it is liable to special assessments for local improvements in cities and villages. The shares of railroad stock held by citizens of the state are exempt. Failure on the part of a railroad company to pay its taxes works a forfeiture of 10 per cent of the taxes due, to be recovered by action in the name of the state and such failure, in theory at least, works a forfeiture of all rights, privileges, and franchises, whether granted by special charter or obtained under general laws. The taxes on a railroad after they become due are a lien on the property of the company, which lien has priority of all other liens, claims or demands, and the state may become the purchaser of the property of a railroad company under a judgment for its sale for unpaid taxes. An amending law of 1905 provides that unpaid railroad taxes shall bear interest at 15 per cent and that a judgment covering taxes and interest shall bear interest at 10 per cent until paid. The Tax Commissioners, who as the State Board of Assessment assess the railroads, have very ample powers of investigation and the companies have abundant opportunity to protest against any injustice that may seem to be being directed against them. Taxation each year is based upon data of the preceding year.

This law of 1903 embodies a very clever expedient to prevent, through litigation upon the part of the railroads, the state's being deprived of revenue from the taxation of such corporations or any one of them. The law provides that rail-

roads should pay in 1905 and 1906, and another amending law of 1905 extended the provision so as to apply up to and including 1909, the old license taxes. If the license tax in any case exceeds the ad valorem tax the difference is refunded to the company; if it is less than the ad valorem tax the company is under legal obligations to pay the difference. At the special legislative session of 1905 it was enacted that no railway company shall hereafter have any right of action or remedy against the state or its officers to set aside the assessment or levy of any tax on such company nor can a railroad company begin action to set aside the railroad tax law until it has paid its taxes, which will be refunded if the law is held void.*

In 1905 several other amending laws were enacted to the end that the administration of the railroad tax might be improved. If the tax on any railroad is adjudged illegal and non-enforcible or is set aside by any state court of competent jurisdiction, the State Board of Assessment shall, whether any part of the tax has been paid or not, re-ascertain the value of the railroads or the value of the general property of the state or the average rate of taxation throughout the state, as may be required, and shall make another assessment which shall be of the same force and effect as the original one. The whole process or any part of it may be repeated as often as is necessary to the determination of the taxes legally due from any company for any year.

In any action or suit brought by a company in the Circuit Court of Dane County to set aside, restrain, or postpone the collection of any tax levied, no injunction or order shall issue to enjoin or restrain the collection of the tax in question, unless the company pays to the state treasurer the amount of the taxes that the Court shall determine primarily to be justly due from such company. A railroad must begin suit within six months after the payment of its tax and such suit must be brought in the Circuit Court of Dane County. No transfer can be made to another court unless both parties consent to it. If the judge

* Since this was written, the law taxing railroads on the ad valorem basis at the average rate on property in general, has been upheld by the Supreme Court of the state. *128 Wis. 553, 108 N. W. 557.*
Vide also *Report of Wisconsin Tax Commission*, 1907, 108 ff.

of the Dane County Court be disqualified, or if a statutory affidavit of prejudice be filed, some other circuit judge shall be called in. Another law of 1905 empowers and directs the Attorney General of the state to begin civil action against any railroad company or person operating a railroad in Wisconsin, who fails to pay to the state all license taxes required by law to be paid.[19]

The writer will conclude this chapter with a discussion of the gross earnings and the ad valorem taxes, including in the discussion the objections of the railroads to the latter tax and also the question of its constitutionality. The one great advantage of the gross receipts tax is its relative simplicity. However, as the controversies between the state and the railroads discussed in the earlier part of this chapter show, its administration is by no means simple. Furthermore, this virtue of relative simplicity is greatly outweighed by many disadvantages, which have reference both to justice between the companies and other tax payers, and between the companies themselves. It is difficult, even impossible, to fix upon a rate such that railroad property will be taxed equally with other property. In practice, under the gross receipts tax, the railroads assess themselves and they enjoy an advantage not enjoyed by others in that their taxes rise and fall with their business. In years of poor business their taxes fall and in consequence thereof the taxes on other classes of property rise. Since a railroad's receipts depend upon its business, its taxes rise and fall in a considerable degree with its ability to pay, with its business, which depends upon general financial conditions, good or poor crops, demand for commodities, upon business conditions in general. However, this advantage enjoyed by railroads taxed under the gross earnings system is in reality not so great as at first sight it appears to be, for the railway business is within certain limits one of increasing returns, hence in most cases its net earnings fall faster than its gross earnings. Notwithstanding, the gross earnings tax has the advantage to the companies of a desirable elasticity, which is a disadvantage to the state, because it has no reference

[19] *Laws of 1903*, ch. 315. *Laws of 1905*, ch. 216, secs. 2, 6, 7, 9; ch. 427; ch. 431, secs 3, 5; ch. 328. *Laws of 1905* (special session), ch. 11.

to the state's needs; in fact the railway tax revenues contract at times when the needs of the state require that they should not. The gross receipts tax works injustice between the roads themselves as well as between the roads and other tax-payers. It is clear that the tax discriminates against railroads having great operating expenses and small profits and favors roads having small expenses and great profits, and it takes no account of different costs of construction. As the tax takes no account of operating expenses, it bears no definite and certain relation to ability to pay, hence the road most able to pay may pay a lower tax than other roads less able. Of course a just system of taxation takes no account of differences when they are due to mismanagement, extravagance or fraud, but it does take into account differences of cost and of operating expenses due to natural disadvantages or to industrial and economic conditions. A just system of taxation is, however, only an ideal. We can never attain to it, but must be content with approximating it as closely as possible. The best possible system of taxation is bound to be faulty and to work some injustice. The difficulties of classification give rise to no little inequality. Under the Wisconsin classification, the Green Bay and Western Railroad would have paid in 1897, $10,000 more in taxes if its earnings had been $8,000 more. Its earnings were less than $35 below $2,000 a mile. If the earnings of the Kewaunee, Green Bay and Western road had been $1,300 more in 1897, its taxes would have been $1,600 more. These illustrations serve to indicate the difficulties of classification.[20] Of course the theoretically ideal tax is the net earnings tax, but the opportunities that it affords for fraud and evasion make it impracticable. A further disadvantage of the gross earnings tax has been pointed out by the Tax Commission and by others. This disadvantage, which is related to public economy, lies in the fact that under the receipts system the railroads, since their taxes are in no way affected by public expenditure, have no interest in keeping down that expenditure. When their taxes are dependent upon public expenditure as under the ad valorem system the railroads may

[20] *Report of Tax Commission*, 1898, 132.

wield great power to the end that extravagance may be prevented instead of log-rolling with legislators who desire certain appropriations. "The general welfare of the people is more likely to be conserved if all taxpayers are directly interested in the fund raised by taxation. The larger the contribution and the more powerful the taxpayer the more potentially can the power be exercised in favor of all that makes for good government."[21]

The strongest objection to the ad valorem tax advanced by the railroads is that they are taxed on intangible elements that are not included in the taxation of any property but that of public service corporations. This is so because the value of their stocks and bonds, which serve as an index of their value is a function of property, of franchise, of good will, and of skill in management. Individuals, manufacturing, mercantile and mining concerns are not taxed on the three intangible elements, franchise, good will, and skill in management, and the railroads may well ask wherein lies the justice of this discrimination. Another argument advanced is that the ad valorem tax is an income tax in the guise of a general property tax, since the value of the railroad as reflected in its stocks and bonds is dependent upon net earnings and net earnings represent profits on labor as well as upon capital. It is notoriously true that property in Wisconsin is assessed at far from its true value, consequently the Tax Commission corrects the valuations taken from the assessment rolls by multiplying such valuations or rather the aggregate valuation by the ratio of true to assessed value as ascertained by property sales and corresponding assessments reported by the registers of deeds in the several counties. The railroads assail this method of correction on the ground that small holdings of real estate are transferred oftener than large properties. The cottages outnumber the mansions, and large properties are assessed at a smaller percentage of their real value than are small properties, hence the ratio of true to assessed value calculated by the Tax Commission is too low. Computations by the Tax Commission of corrected statistics for the years 1895 to 1899 inclusive reported by the registers of deeds show real estate to

[21] *Report of Tax Commission*, 1901, 89.

have been assessed on the average at 43.4 per cent of its real value. The commission sent 12,000 letters to town and county officers, to prominent citizens and property owners asking for information as to the relation between the true and assessed value of real estate. Replies from town and county officers, 2,220 in number, indicated that the percentage was 45.9. Replies from 1,667 selected farmers indicated an average of 48 per cent. Another correspondence investigation resulting in satisfactory replies from 1,124 farmers in 68 out of the 73 counties showed farm lands to be assessed at 38 per cent of their real value. Computations on the basis of sales for five years showed an average for farm lands of 39.5 per cent. The railroads in 1900 made an investigation of the ratio of true to assessed value. Their method was as follows: Persons familiar with real estate values were sent into 16 counties. After consulting real estate men they made a list of about twenty pieces of representative property the value of which they computed by conferring with the owners, their neighbors, and real estate men. The ratio of assessed to true value found was 35.7 per cent. The Tax Commission's ratio for the same counties, computed from reports of sales, was 38 per cent. There can be no doubt that the report of sales method is faulty and because of this fact, the railroads have no inconsiderable argument against the ad valorem tax. Registers of deeds are by no means always accurate nor conscientious in making out their reports and much of the data is misleading.* Many considerations stated in deeds are fictitious and many considerations in cases of trades are placed very high. Of course considerations that are over-stated favor the railroads by making the ratio of true to assessed value higher or the ratio of assessed to true value lower. A satisfactory administration of the ad valorem tax on railroads demands assessment of property in general at its full value, and this can be attained only by having assessments made by state assessors who will be under civil service rules and whose tenure of office will depend upon a thorough, efficient and impartial discharge of their duties.

* This data will henceforth be collected by agents of the Tax Commission. *Laws of 1907*, ch. 522.

Many other objections to the ad valorem system are made, of which two have been disposed of by the Federal Supreme Court in the Michigan ad valorem cases decided in April, 1906.[22] In these cases the court held that no provision of the federal constitution can nullify the action of a state in granting under its constitution legislative functions to the executive or the judiciary, and that generally speaking in the matter of taxation a state has the freedom of a sovereign both as to objects and methods. Furthermore, what is more important in so far as Wisconsin is concerned, since the Wisconsin Constitution unlike the Michigan Constitution does not provide for ad valorem railroad taxation, the ad valorem law does not delegate a legislative function. Apropos of this point Mr. Justice Brewer said, "It may be laid down as a general proposition that where a legislature enacts a specific rule for fixing a rate of taxation by which rule the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of the rate, there is no abdication of the legislative function, but, on the contrary, a direct legislative determination of the rate." The railroads in Wisconsin complain that their taxes are determined chiefly by the action of local levying officers,† while the railroad property taxed is largely outside of the jurisdiction of such officers, and that the railroads have no opportunity to appear before these local taxing powers. It is complained further that the tax depends largely upon expenditures for purposes other than governmental. There is, in a sense, some truth in the contention that the tax is determined largely by the State Board of Assessment, since the tax depends in part upon the Board's estimate of the value of the general property of the state. The railroads contend further that the railroad tax is not uniform with taxes for state purposes placed upon other forms of property, and that railroad property is taxed higher than other property in the same jurisdiction.[23] The Wis-

[22] *Chicago Record-Herald*, April 2, 1906.

† Since the rate on railroads is made up of elements determined by local taxing officers.

[23] Peck, George R., Brief in behalf of the Chicago, Milwaukee and St. Paul Railroad, 1903; Bowers, Lloyd W., Brief in behalf of the Chicago and Northwestern Railroad, 1903; *Milwaukee Free Press*, Jan. 10, 1905; *Report of Tax Commission*, 1901, 59, 61.

consin ad valorem law has been upheld in one of the Circuit Courts of the state.[24] It has not yet come before the Supreme Court.

The United States Industrial Commission sums up as follows the advantages of the ad valorem system administered by a state board:

"The duties of assessment are in the main performed by experienced and competent officials thus minimizing the liability of unequal assessments, as between localities and between companies, under a property tax; the popular demand that corporations be taxed on the same basis as individuals is realized; the method is in accord with both state and federal constitutional provisions, besides being reasonably productive and constant in its yield from year to year."[25]

An honest and efficient board is essential to a satisfactory administration of the ad valorem system. Wisconsin is fortunate in having such a board, but the state must effect two reforms before its ad valorem system will harmonize with its general system of taxation. There is required an income tax that will tax intangible elements in business other than that of public service corporations. Besides, property in general must be assessed at its full value. This can be accomplished only through expert assessors depending for continuance in office on honest, efficient service. If the writer is a judge of the tendencies in Wisconsin taxation these two reforms are not far distant.

Up to 1854 railroad property in Wisconsin was taxed locally just as other property. From 1854 to 1903 a gross receipts tax obtained, with a graduated scale from 1876 on. Since 1903 the railroads have been taxed on the ad valorem basis at the average rate of taxation on property in general throughout the state.

The following table is from a Special Report of the Railroad Commissioner, Mar. 23, 1905.

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[24] *Madison Democrat*, Nov. 5, 1905.

[25] *Ninth Industrial Report*, 1018. Cited in *Report of Tax Commission*, 1903, 162.

SUMMARY OF IMPROPER DEDUCTIONS ON THE C., M. & ST. P., C. & N. W., C., ST. P., M. & O., ST. P. & S. S. & M. W. C., G. B. & W., K., G. B. & W., D., S. S. & A., N. & N. P. Rys.

	Before 1897.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	Totals.
AMOUNTS WRONGFULLY DEDUCTED FROM GROSS EARNINGS BEFORE REPORTED FOR TAXES:									
Commission and repayments to shippers on freight traffic.....	$83,967 29	$351,621 42	$617,704 25	$770,314 84	$814,665 38	$1,066,259 65	$958,437 58	$714,232 62	$5,077,192 97
Commission and repayments on passenger tickets	14,958 32	99,275 98	134,497 07	158,509 99	133,974 95	110,877 09	149,973 08	70,605 27	872,661 70
Expense of operating hotels.....	.....	.....	.....	.....	1,310 39	.....	.....	290 57	1,600 96
Expense of operating sleeping cars	3,804 48	1,311 23	1,701 06	1,693 07	1,507 62	1,627 80	2,083 65	.....	13,728 91
AMOUNTS NOT REPORTED FOR TAXES THAT ARE A PART OF GROSS EARNINGS:									
Car mileage—Credit balance	.....	42,697 90	94,224 45	113,368 52	147,183 95	168,593 27	140,137 26	271,095 33	977,300 79
Switching charges collected	.....	211,879 86	253,464 99	344,599 88	292,430 94	276,261 99	221,679 24	236,024 32	1,986,341 22
Storage, demurrage and misc.....	.....	1,568 50	5,009 00	4,849 55	3,851 15	18,831 82	55,968 29	75,256 79	165,304 09
Rental of tracks and terminals....	.....	89,941 88	91,104 69	101,111 18	97,379 60	92,297 85	91,601 48	82,366 68	645,808 31
Totals	$102,730 09	$798,266 83	$1,197,605 51	$1,494,446 03	$1,492,303 96	$1,734,739 47	$1,419,880 46	$1,499,851 58	$9,739,963 96

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ABSTRACT OF VALUATION AND ASSESSMENT OF THE PROPERTIES OF ALL RAILROADS IN WISCONSIN FOR THE YEAR 1906, AND TAXES LEVIED THEREON FOR SAID YEAR BY THE STATE BOARD OF ASSESSMENT.

Name of Company.	Valuation.	Tax at .0113819066	License fee in 1906.	Balance or amount of taxes payable.	Balance to be refunded.
Abbotsford & N. E. R. R. Co.	$80,000	$910 55	$961 34	.....	$50 79
Ahnapee & West. Ry. Co.	195,000	2,219 47	479 09	$1,740 38	.....
Bayfield, Harb. & Gr. West. R. R. Co.	9,500	108 12	30 00	78 12	.....
Bayfield, Sup., & Mpls., Ry. Co.	4,000	45 52	.....	45 52	.....
Bayfield Trans., Ry. Co.	9,500	108 12	19 30	88 82	.....
Big Falls Ry. Co.	25,000	284 54	105 00	179 54	.....
Chi., & Lake Sup. Ry. Co.	4,500	51 21	25 55	25 66	.....
Chi., & N. W. Ry. Co.	76,500,000	870,715 85	670,540 93	200,174 92	.....
Chi., Burl. & Quincy Ry. Co.	9,700,000	110,404 49	107,011 56	3,392 93	.....
Chi., Harv. & G. L. Ry. Co.	22,000	250 40	357 63	.....	107 20
Chi., L. Shore & E. Ry. Co.	360,000	4,097 48	3,628 38	469 10	.....
Chi., Mil. & St. P. Ry. Co.	75,800,000	862,748 52	627,275 13	235,473 39	.....
Chi., St. P. M. & O. Ry. Co.	24,700,000	281,133 09	223,479 82	57,653 27	.....
Chip. Riv. & N. Ry. Co.	36,000	409 74	125 00	284 74	.....
Chip. V. & N. Ry. Co.	23,000	261 78	72 50	189 28	.....
Davis, John R. Lbr. Co.	48,000	546 33	102 50	443 83	.....
Drummond & S. W. Ry. Co.	45,000	512 18	91 45	420 73	.....
Duluth, S. S. & Atlantic Ry. Co.	1,300,000	14,796 47	10,814 97	3,981 50	.....
Dunbar & Wausaukee Ry. Co.	65,000	739 82	116 10	623 72	.....
Fairchild & N. E. Ry. Co.	110,000	1,252 00	165 00	1,087 00	.....
Great Northern Ry. Co.	7,200,000	81,949 72	45,375 44	36,574 28	.....
Green Bay & W. R. R. Co.	1,850,000	21,056 52	20,423 20	633 32	.....
Hawthorne, Neb. & Sup. Ry. Co.	65,000	739 82	249 07	490 75	.....
Hazelhurst & S. E. Ry. Co.	25,000	284 54	680 70	.....	396 16
Hillsboro & N. E. Ry. Co.	11,000	125 20	326 05	.....	200 85
Illinois Central R. R. Co.	1,000,000	11,381 90	456 55	10,925 35	.....
Iola & Northern R. R. Co.	8,500	96 74	23 50	73 24	.....
Kewaunee, Green Bay & W. R. R. Co.	395,000	4,495 85	4,415 52	80 33	.....
La Crosse & S. E. Ry. Co.	320,000	3,642 21	211 15	3,431 06	.....
Lake Sup. T. & T. Ry. Co.	330,000	3,756 02	81 65	3,674 37	.....
Laona & Northern Ry. Co.	25,000	284 54	65 00	219 54	.....
Marathon Co. Ry. Co.	33,000	375 60	77 50	298 10	.....
Marinette, Tom. & W. Ry. Co.	110,000	1,252 00	218 85	1,033 15	.....
Mattoon Ry. Co.	60,000	682 91	146 80	536 11	.....
Mineral Point & N. Ry. Co.	265,000	3,016 20	153 00	2,863 20	.....

ABSTRACT OF VALUATION AND ASSESSMENT OF THE PROPERTIES OF ALL RAILROADS IN WISCONSIN FOR THE YEAR 1906, AND TAXES LEVIED THEREON FOR SAID YEAR BY THE STATE BOARD OF ASSESSMENT—Continued.

Name of Company.	Valuation.	Tax at 0113819066.	Licence fee in 1906.	Balance or amount of taxes payable.	Balance to be refunded.
Mpls., St. P. & Ash. Ry. Co.	112,000	1,274 77	202 50	1,072 27	.....
Mpls., St. P. & S. S. Marie Ry. Co.	9,600,000	109,266 30	76,124 42	33,141 88	.....
Northern Pacific Ry. Co.	3,160,000	35,966 82	22,618 18	13,348 64	.....
N. W. Coal Ry. Co.	77,500	882 09	592 46	289 63	.....
Oshkosh Transp. Co.	75,000	853 64	337 83	515 81	.....
Robbins R. R. Co.	46,000	523 56	140 00	383 56	.....
Stanley, Merrill & Phillips Ry. Co.	115,000	1,308 91	3,840 09	.....	2,531 18
Sup. & S. E. Ry. Co.	10,000	113 81	108 05	5.76	.....
Whitcomb & Morris Ry. Co.	10,000	113 81	30 00	83 81	.....
Winona Bridge Ry. Co.	150,000	1,707 28	267 39	1,439 89	.....
Wis. & Mich. Ry. Co.	250,000	2,845 47	1,439 26	1,413 21	.....
Wis. Central Ry. Co.	22,300,000	253,816 51	233,475 08	20,341 43	.....
Wis. Western R. R.	600,000	6,829 14	289 85	6,569 20	.....
Total	$237,289,500	$2,700,237 56	$2,057,733 34	$645,790 43	$3,286 21

CHAPTER X

TAXATION OF OTHER PUBLIC SERVICE CORPORATIONS

I. Taxation of Telegraph and Telephone Companies

The first corporation tax in Wisconsin was a per mile of wire tax on telegraph companies. In 1848, at the last session of the legislature of the Territory of Wisconsin a law was enacted providing that in lieu of all other taxes telegraph companies should pay an annual tax of twenty-five cents per mile of line.[1] The constitutionality of this method of taxing telegraph companies has never been decided upon in the Wisconsin Courts, but the Federal Supreme Court has decided that such a tax constitutes no interference with interstate commerce. The court has held that states may not impose taxes on the business of a telegraph company engaged in transmitting messages between different states, but that they may levy a per mile of wire tax in lieu of all other taxes. Such a tax is a tax on property and constitutes no interference with interstate commerce.[2]

In 1867 the telegraph tax was increased to fifty cents a mile, and in 1868 to one dollar. The companies were not at all scrupulous about making reports of their miles of line and hence in 1873 it was provided that failure to make the report required and to pay the tax should work a forfeiture to the state of $500, to be recovered by suit.[3] Up to 1878 the per mile of wire tax was in lieu of all other taxes, but in that year it was made in lieu of all other taxes except those on real estate.[4] In the years

[1] *Laws of Wisconsin Territory*, 1848, 258.
[2] Cooley, *On Taxation* (third ed.), I, 160.
[3] *Laws of 1867*, ch. 160. *Laws of 1868*, ch. 141. *Laws of 1873*, ch. 228.
[4] *Revised Statutes*, 1878, ch. 48, sec. 1038, art. 15.

1874 and 1875 Governor Taylor remonstrated against the low taxes levied on telegraph companies, which paid into the State Treasury in 1874 only $2,346. The Secretary of State in 1872 recommended a gross earnings tax and also a percentage penalty for delinquency, 1 per cent for the first month of delinquency, 2 per cent for the second, and 3 per cent for each succeeding month.[5] The Secretary in 1874 urged heavier taxes on telegraph companies and also on express companies.[6] In the same year Governor Taylor declared that there was no reason why such companies, which enjoyed the protection of the state, earned large dividends, and excluded the citizens of the state from carrying on like enterprises, should not bear a full proportion of the burdens of the government. The next year he dwelt at greater length upon the subject, declaring that the partiality of the legislature of 1874 to express and telegraph companies was a just cause for complaint. The Governor regarded the taxes on these companies and on sleeping car companies as merely nominal and indeed they were hardly more than such. Other corporations in a large measure remunerated the state for the protection that they enjoyed. Every farm house, workshop, factory, and foundry paid tribute somewhat in accordance with its productive power, but express and telegraph companies were exempt from amenability to this rule. The practical exemption of these companies and of sleeping car and freight line companies as well was not in accord with the theory upon which past corporation tax legislation was based, namely, that the exercise of any valuable franchise within the state implied an obligation to share the burdens as well as the blessings of state government, nor was it in accord with any other principle of just taxation. The Governor would have been nearer the truth if he had said that it was not in accord with the principle upon which past corporation tax legislation should have been based. Nevertheless, he was undoubtedly right in his contention that the companies indicated above were not paying their just taxes.[7]

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[5] *Secretary of State's Report*, 1872, 35.
[6] Ibid., 1874, 43.
[7] *Governor's Message*, 1874, 7; Ibid., 1875, 8-9.

In 1882 the taxes on telegraph companies were increased by the substitution of wire for line and the introduction of a graduated scale. It was provided that every person, company, or corporation doing a telegraph business in Wisconsin should pay per mile for the first wire one dollar, for the second fifty cents, for the third twenty-five cents, and for the fourth and all additional wires twenty cents each.[8]

This graduated per mile of wire tax obtained until 1905, when provision was made for taxing telegraph companies on the ad valorem basis. The State Tax Commission in 1900 attempted to determine the difference between the taxes paid by the companies and the taxes that they would pay under the ad valorem system, also as to whether their earning capacity justified the application of that system. By both the stocks and bonds and the capitalization of earnings methods of determining the value of corporate property, it was made plain that the Western Union Telegraph Company was paying less in taxes than it would pay under the ad valorem system. It was decided also that the earning capacity of the company justified the application to it of that system. This company paid the state in 1899, $10,424. On the basis of a five year's average of its stocks and bonds it would have paid about $12,700. On the average value of its stocks and bonds for 1899, it would have paid about $15,000. The commission was unable to reach any satisfactory conclusions with respect to the Postal Telegraph Company because of the failure of that company to make a report to the commission of stock and bond values and earnings. The commission recommended, however, the application of the ad valorem system to the Postal Company as well as to the Western Union.[9]

Because of political conditions and the relative unimportance of telegraph taxation no change was made, however, until 1905, when it was enacted that telegraph companies shall be taxed on their property, which is defined by the law as all franchises, rights of way, poles, wires, cables, devices, appliances, instruments, and all other real and personal property used by the companies in the carrying on of their business. The rate is

[8] *Laws of 1882*, ch. 320, sec. 4.
[9] *Report of Tax Commission*, 1901, 115–119, 164.

the average rate on the general property of the state. The first assessment under this law is to be begun in 1906 and finished in 1907 and is to be known as the assessment of 1907. Consequently the first levy of the ad valorem tax on telegraph companies is to be made in 1907. The companies are required to furnish the State Board of Assessment, the Tax Commission, with complete statistics of their property and business. The stocks of the companies in the hands of individuals are exempt from taxation and the state tax on the companies is in lieu of all other taxes except local taxes on their real estate. Justice demands that the state tax be in lieu of all other taxes as in the case of railroads.[10]

The first telephone tax was provided for in 1883, when a law was enacted requiring all persons, companies, associations, or corporations doing a telephone business in the state to pay a license tax annually of one per cent of their gross receipts from business done within the state. This license tax was in lieu of all other taxes except those on real estate owned by telephone companies, but in no way connected with or used in the carrying on of the telephone business. Neglect to file a statement of gross receipts before the tenth of February in each year or failure to pay the tax worked a forfeiture of $5,000 to be recovered by suit and such neglect or failure constituted a cause of forfeiture of all rights, privileges, and franchises under which the business was carried on, whether granted by special charter or obtained under general laws or existing by comity in foreign corporations.[11]

Since 1883 there have been many changes in the rate and the graduated principle has been introduced. In 1885 the rate was made 1½ per cent; in 1891, 2¼ per cent; and in 1897 a graduated scale was adopted. If the gross receipts were less than $100,000 a year, the rate was 2¼ per cent, the general rate of 1891; if they exceeded $100,000 the rate was 3 per cent.[12] In 1900 the Tax Commission made an investigation to determine whether the telephone companies were paying their just taxes.

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[10] *Laws of 1905*, ch. 494.
[11] *Laws of 1883*, ch. 345.
[12] *Laws of 1885*, ch. 337. *Laws of 1891*, ch. 166. *Laws of 1897*, ch. 309.

Of the 100 companies, 50, including all the important ones, reported to the commission respecting the value of their stocks and bonds. On the ad valorem basis determined by taking the average value of their stocks and bonds for 1899, these 50 companies would have paid in taxes to the state in that year, $31,100; taking a three year average they would have paid, $29,134; taking a five year average they would have paid $27,373. The 100 companies paid only $17,315. The Commission recommended, however, not an ad valorem tax, but an increase in the rate. They recommended a scale of rates from 3 per cent to 5 per cent.[13] A law of 1905 provides for the higher rates of 2½ and 4 per cent. This law provides also for a division of telephone taxes between the state and local communities. To the city, town, or village in which the exchange is located goes 85 per cent of the tax on gross receipts from exchange or local business. The remaining 15 per cent goes to the state. All of the tax from toll or long-distance business goes to the state. Unpaid taxes draw interest at the rate of 15 per cent, and taxes and interest constitute a lien on the company's property.[14] In 1905 Governor La Follette recommended the assessment of telephone companies by the State Board of Assessment and on the ad valorem basis, but he was in doubt as to whether the average rate of taxation should be applied.

The gross receipts tax on telephone companies has been declared valid by the State Supreme Court in the case of the *Wisconsin Telephone Company vs. Oshkosh*. The city of Oshkosh attempted to exact of the telephone company a license fee of $300 for the privilege of using its streets and alleys. The Court held that such a fee could not be charged without express legislative authority, as the state tax is in lieu of all other taxes.[15]

In 1887 the telephone tax law was made applicable to telegraph companies operating "wholly in the state or in one or two counties," provided that they charged no more than 25 cents for a message of 25 words and not more than one cent

[13] *Report of Tax Commission*, 1901, 119, 164.
[14] *Laws of 1905*, ch. 488.
[15] *62 Wis.*, 32.

for each additional word.[16] The phrase "wholly in the state or in one or two counties" is not very clear, but it is the evident intention of the law to extend the low telephone tax to local telegraphs.

II. Taxation of Street Railways and Electric Lighting Companies

Street Railways were first subjected to a special method of taxation in 1895, by a law providing that on or before February 1, 1896, and on or before the same day in each succeeding year, street railway companies should pay to the treasurer of the city, village or other corporate unit in which they operated a certain percentage of their gross receipts for the preceding year. On the first $250,000 or fraction thereof the rate was 1 per cent; on the next $250,000 or fraction thereof the rate was 1½ per cent; if the receipts were over $500,000 the rate on the excess was 2 per cent. This tax was divided between village, city or town, county and state in the following proportions; 91 per cent to the village, city or town, 6 per cent to the county, and 3 per cent to the state. In case a railway operated in more than one corporate unit the 91 per cent was divided on a mileage basis, but if a railway had most of its track in a city but projected into neighboring towns and villages the division was on a mileage basis with the modification* that the city should receive "three portions of such tax for every mile to every one portion received by the neighboring town or village."[17]

A law of 1897 pertaining exclusively to street railways operated by mechanical power and also to companies or corporations

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[16] *Laws of 1887*, ch. 232.

* The shares going to city and neighboring towns may be determined by the following formulae:

the city's share equals $\frac{3a\,T}{3a+b}$

the town's share equals $\frac{b\,T}{3a+b}$

a = number of miles in the city.
b = number of miles in the town.
T = amount of the tax.

[17] *Laws of 1895*, ch. 363.

furnishing electric light or power introduced a new classification on the basis of gross earnings. Taxes under this law were due December 15. Companies whose gross receipts equalled or exceeded $800,000 a year paid 3 per cent on $800,000 and 4 per cent on any excess. Companies whose receipts were less than $800.000 paid as follows: 1½ per cent on the first $250,000, 2½ per cent on receipts in excess of $250,000. The distribution of the tax between cities and villages or towns remained as provided for in the law of 1895; 91 per cent of the total tax still went to the municipality or municipalities; 3 per cent to the county and 6 per cent to the state. The earlier law gave 6 per cent to the county and 3 per cent to the state. These license taxes were in lieu of all other taxes that might be levied on the property necessarily connected with the power plant or the railway system. The Supreme Court of the State decided in this same year that the law of 1895 clearly exempted street railways from paying local assessments and it is reasonable to infer that the law of 1897 did also.[18]

Two years later, in 1899, the classification was changed and the graduation within classes was discontinued. Companies whose gross receipts equalled or exceeded $500,000 a year were taxed at the rate of 4 per cent; all other companies at the rate of 2 per cent. The rapid extension of interurban railways suggested that perhaps a larger percentage of the electric railway tax should be paid into the State Treasury; the law of 1899 provided, therefore, that only 88 per cent of the tax should go to the municipality, 3 per cent to the county and 9 per cent to the state. This law declares that no electric light and power company not operated in connection with or forming a part of an electric railway system should be longer taxed as street railway companies, but should be subject to the general tax laws of the state.[19]

A law of 1905 placed all roads having an income of $400,000 or over in the first class and made the rate on them 5 per cent; the rate on the second class roads was raised to 2½ per cent.[20]

[18] *Laws of 1897*, ch. 223; *Milwaukee R. and L. Co. vs. City of Milwaukee and another, 95 Wis.*, 42.
[19] *Laws of 1899*, ch 354.
[20] *Laws of 1905*, ch. 437.

It should be noted that the observance of the license tax law respecting electric railways was so far from perfect that it seemed desirable if not necessary to provide in 1899 that failure to file a verified statement of gross receipts should make each of the general officers of a delinquent company liable to a fine of not to exceed $1,000 or imprisonment for not to exceed six months or both.[21]

In the case of the *Merrill Railway and Light Company vs. the City of Merrill* the Supreme Court in 1903 handed down a decision that is of great importance in taxation. With Justice Marshall dissenting, the Court held that land leased by the railway company and necessarily used in its business was "owned" within the meaning of the statute and was therefore exempt from general taxation. Justice Marshall held that the land was not "owned" since if the company were taxed by the general method the land would not be taxed to it, but to the owner.[22]

The gross receipts tax on street railways in Wisconsin has given way to the ad valorem tax and direct control by the state. In its report of 1901 the State Tax Commission made a strong argument for state control and for an apportionment of a large part if not all of the tax to the state. Control by the state was highly desirable because the electric railway was spreading out over the state and problems of rates and fares were bound to arise in the near future. The electric railway was even then assuming a character and importance that demanded state control and for that reason alone it seemed just and expedient that a large part if not all of the taxes on electric railways should go into the state treasury. The further argument was advanced that wisdom and expediency dictated that the state should have sources of revenue sufficient to relieve it of the necessity of levying taxes on the counties, which levy promotes a struggle among the counties to escape paying more than their individual shares of the state tax or to escape as much as possible of such tax, a struggle which tends to increase undervaluation. The commission was of the opinion that this strife led to increased difficulty of finding intangible personalty.

[21] *Laws of 1899*, ch. 354, sec. 1.
[22] *119 Wis.*, 249.

However, as such personalty is held mostly in cities, where the state tax is but a small part of the total tax, the writer does not believe that this strife increases the difficulty of discovering such property. Notwithstanding, as the commission said, making the state independent of the counties in the matter of revenue does advance tax reform.[23]

In this same year it was made evident that the street railways were not paying their full share of the taxes. A stock and bond computation having to do with 16 out of the 19 companies showed that on the basis of a five year average of their stocks and bonds these 16 companies would on the ad valorem basis have paid in taxes in 1899, $150,000; taking a three year average, $160,000; taking the average for 1899, $175,000. They paid in 1899 only $104,677. The commission did not, however, recommend the application of the ad valorem system, but recommended license taxes on both street railway and electric light and power companies at rates from 3 per cent to 5 per cent.[24]

In his message of 1905 Governor La Follette recommended that the electric railway and electric lighting companies be taxed on the ad valorem basis, as under the gross receipts law they did not pay their just portion of the taxes levied in the state. The total tax paid by such companies in 1904 was $140,792.72, of which $124,175.44 was paid by companies operating in Milwaukee County. Only one company, the Milwaukee Electric Railway and Lighting Company, paid 4 per cent. The gross receipts of the Milwaukee Light, Heat and Traction Company were reported as $452,930, hence it paid only 2 per cent, but it is owned by the former company. The property of these two companies was estimated to be worth at least $23,500,000, which seems to be a fair estimate, as the value of their stocks and bonds on December 31, 1903, was $23,539,500 and their reported earnings for 1903 of $1,576,801 capitalized at 6 per cent equal $26,280,016. Their taxes accordingly at the average rate of all taxes, .0114403568, would have been in 1904 $268,000. All the companies in Milwaukee County paid only

[23] *Report of Tax Commission*, 1901, 75.
[24] *Report of Tax Commission*, 1901, 114, 163.

$124,175. At the average rates for the cities in which they operate they would have paid very much more than twice as much as under the gross receipts system. The Governor recommended that the property of such companies be assessed by the State Board of Assessment, but that they be taxed locally at local rates. He contended that it would be unjust and unwise to deprive local communities of taxes on such property, which is largely local in its character, and unjust to tax it at the average rate for the state, as the rates in the cities where the greater part of such property is situated are much higher than the average rate.[25]

The legislature of 1905 enacted a law making electric railway and electric lighting companies subject to the ad valorem system and at the average rate of taxation. The companies are to be taxed on their property, which the law defines as all franchises, rights of way, road-beds, tracks, stations, terminals, rolling stock, equipment and all other real and personal property used in the operation of the railway or in the conduct of its business. The taxes thus levied by the state are to be in lieu of all other taxes except local assessments in cities and villages. The state is to retain 15 per cent of the tax, and the remainder is to be distributed among the towns, cities and villages in which the lines are operated and in proportion to the gross receipts in each in the preceding year. The first assessment under this law is to be made in 1908.[26]

III. Taxation of Express, Sleeping and Palace Car, Freight Line and Equipment Companies

Up to 1899 express companies paid in Wisconsin only local taxes on their few horses and wagons and other property, although over thirty years before the attention of the legislature was called to the fact that the state received no revenue from these companies, which were doing a large and lucrative business in Wisconsin, and it was suggested that such companies be re-

[25] *Governor's Message*, 1905.
[26] *Laws of 1905*, ch. 493.

quired to pay a license tax to compensate for the protection afforded them by the state laws.[27] Again in 1874, Governor Taylor declared that there was no reason why such companies, enjoying the protection of the state, earning large dividends and excluding citizens of Wisconsin from carrying on similar enterprises, should not bear a full proportion of the burdens of government. The legislature, however, took no action and in his next message the Governor declared that the partiality of that body to the express companies and the telegraph companies constituted a just cause for censure and complaint.[28] The legislature of 1899, however, was alive to its duty respecting the taxation of express and similar companies. The law of that year respecting the former provides that they shall be taxed at the average rate of taxation as in the case of railroad companies, and that their taxable value shall be determined each year by the State Board of Assessment in the following manner: from the actual money value of a company's capital stock shall be deducted the value of its real estate situated outside of the state and also the value of all its personal property not used in the express business; the result thus obtained shall be divided by the total number of miles of railroad, stage, water and other routes over which the company does business; this operation gives the value per mile, which value is multiplied by the mileage in Wisconsin, excluding, however, the mileage over navigable waters of the United States in Wisconsin; this final result is the taxable value taken.* The tax thus levied is in lieu of all other taxes. In case an express company fails to report the value of its stocks, its mileage, etc., to the State Treasurer, the tax is levied on the basis of the best information ob-

[27] *Secretary of State's Report*, 1866, 43.

[28] *Governor's Message*, 1874, 7; ibid., 1875, 8.

*The basis and rate may be expressed thus:

$$\text{Basis equals } \frac{\text{(actual value of capital stock)} - \text{Value of real property outside of state} + \text{personal property not used in express business.}}{\text{total mileage}} \times \text{Mileage in Wisconsin, excluding mileage over navigable waters of U. S. in Wisconsin.}$$

$$\text{Rate equals } \frac{\text{(total taxes on general property of state)} \times 100}{\text{value of general property of the state}}$$

tainable and a penalty of 10 per cent is added to the tax. If a company refuses to pay its tax it becomes the duty of the Attorney-General to proceed by suit to collect the tax, a 10 per cent penalty and the costs of the action. A law of 1905 provides that in assessing express, sleeping car, freight line and equipment companies doing business outside as well as within the state, the Board of Assessment shall take into consideration the value of the entire system, of that part within the state, the earning capacity of the entire system, of that part within the state, the entire mileage and the mileage within the state. Water, coastwise and ocean mileage may be excluded. This law modifies the purely per mileage method, by introducing into the process of determining the value the factor of earning capacity within and without the state. Unpaid taxes draw interest at the rate of 15 per cent, which interest is in lieu of the 10 per cent penalty prescribed by the law of 1899.[29]

In 1883 the Governor in his message observed that sleeping cars were running on nearly all roads of any size in the state and that on most of the lines they were owned by companies other than the railroad companies, which sleeping car companies, wealthy, money-making corporations, made no reports of their earnings and paid no revenue to the state.[30] The legislature taking cognizance of this condition provided for the taxation of not only sleeping car companies but also of palace and drawing-room car companies. The law enacted provided for an annual license tax of 2 per cent of gross earnings. In 1885 the rate was increased to 4 per cent. The companies were required to make to the Railroad Commissioner before February 10th each year statements of their gross earnings in Wisconsin in the year preceding. One-half of the tax was due when the license was applied for; the other half on or before August 10. Companies failing to comply with the law were to be restrained, on petition of the Attorney-General, from doing business in the state. The law did not apply to railroad companies operating such cars in Wisconsin.[31]

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[29] *Laws of 1899*, ch. 111. *Laws of 1905*, ch. 477.
[30] *Governor's Message*, 1883, 17.
[31] *Laws of 1883*, ch. 353. *Laws of 1885*, ch. 415.

Almost immediately the question arose as to whether the law imposed a tax on receipts from passengers carried from without the state to points within the state, or from within the state to points outside, or through the state. The companies maintained that it did not, that it taxed only receipts from passengers getting on and getting off in Wisconsin. It was asserted that a tax on other receipts would amount to an interference with inter-state commerce. The matter came before the State Supreme Court in 1885 in the case of the *State vs. Pullman Palace Car Co. and another.*[32] This suit was begun because of the companies' interpretation outlined above. The Attorney-General maintained that the state might stipulate the terms upon which any company chartered in another state might do business in Wisconsin, that it might even exclude such a company altogether. A majority of the Court upheld the contention of the companies. The first clause of the law reads, "No owners . . . shall have a right to use or charge or collect fare or compensation for the use of any such car within the State until such owner shall have procured from the State Treasurer a license to use such cars within this State as hereinafter provided." The construction of the law turned on the section that required owners of such cars to make "a true statement of the gross earnings made by the use of such cars *between points within the State of Wisconsin, etc.*" The Court held that it could not have been the intention of the legislature, in view of the words *between points within the State,* to require reports of earnings from traffic originating outside of the state and ending in the state or vice versa, or from traffic passing through or across the state. It was pointed out that the language used in the law under consideration was not the general language employed in the law requiring reports from railroads. While admitting that it might be regarded as absurd to construe the law as referring only to earnings from traffic between points within the state, the Court affirmed that there were three sufficient objections to any other construction; first, so liberal a construction in favor of the state as that urged by

[32] 64 *Wis.*, 89.

the Attorney-General was not permissible; second, because of the commerce clause in the federal Constitution there was grave question as to the power of the Wisconsin legislature to impose a license tax upon persons or companies upon the basis of their earnings from the transportation of passengers into, out of and across the state, in cases in which the persons or companies were not residents of the state and had no taxable property in the state; the third objection was declared to lie in the history of the act itself. The legislative journals for 1883 show that two bills relating to licenses for such companies were introduced. The House bill, which was number 89, provided for a tax on Wisconsin's per mileage share of all gross earnings. The original Senate bill, which was number 65, provided for a tax upon the gross earnings made by the companies upon the railroads within the state. The bill passed, as an amendment of the Senate bill, provided for a tax upon gross earnings made by such cars *between points within the state,* instead of gross earnings made in the state.

Justice Cassoday, now Chief Justice, in his dissenting opinion held that the opinion of the majority of the Court fell before the first and sixth sections of the act. The first section forbade the *use* of such cars within the state unless the license therefor had been procured. The phrase *between points within the state* he maintained had reference to earnings made by the use of cars within the state. The law was certainly worded in an unfortunate way and there is much to be said for both decisions but justice certainly demanded the minority one.[33]

This decision cut down the receipts from this tax to a very low figure. In 1885 only $240 was received. It is pretty clear that the lobbyists of these companies did very skillful work in bringing about the passage of this act rather than either of those originally introduced. Of course the companies desired to escape all taxation and evaded in so far as they could even the limited tax prescribed by the Supreme Court. It was their practice to a considerable extent to give a traveler asking for a sleeping car ticket for between two points within the state a ticket to some point beyond his destination and outside of the

[33] *64 Wis.*, 89.

state. The legislature of 1897 provided for the adequate taxation of these companies but the acts were vetoed by the Governor on the ground that they were not passed in the manner prescribed by the Constitution.[34]

In 1899, however, a new law was enacted applying not only to sleeping car companies but also to dining, buffet, chair, parlor and palace car companies. The law taxing these companies is identical with that taxing express companies, except that the value only of real estate owned by a company outside of Wisconsin is subtracted from the value of the capital stock.[35] In that year also the same method of taxation was made applicable to freight line companies and to equipment companies, which the law defines as "any person or joint stock company, partnership, association or corporation whose principal business is the furnishing or leasing of any kind of railroad cars to common carriers or to shippers, except sleeping cars, to be used on a line wholly or partly in the state."[36] We have already noticed how a law of 1905 modified this per mileage system of taxation, concerning the validity of which system there can be no doubt, as it has been upheld by the Supreme Court of the United States in the case of the *Pullman Car Co. vs. Pennsylvania*.[37]

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[34] *Report of Tax Commission*, 1898, 139-140.
[35] *Laws of 1899*, ch. 112.
[36] *Laws of 1899*, chs. 113, 114, 149, 277.
[37] *141 U. S.*, 18 (cited in *Report of Tax Commission*, 1898, 140.)

CHAPTER XI

TAXATION OF BANKS, INSURANCE COMPANIES, ETC.

I. Bank Taxation

In the Territorial period there was no bank tax; in the first four years after Wisconsin became a state there were no banks in that commonwealth, but on the second of November, 1852 the people by a vote of 32,826 to 8,711 expressed their approval of state banks and the bank act passed by the legislature the preceding spring became a law. The Constitution provided that no banking act should become a law until approved by the people. This law authorizing banking provided for a semi-annual tax of ¾ of 1 per cent on capital stock. Failure to pay the tax within twenty days after the first of January and the first of July each year worked a forfeiture of 1 per cent of the capital stock of the delinquent bank. The unpaid tax and the forfeit constituted a lien on the interest on the securities deposited with the State Treasurer to secure the note circulation of the bank. If the interest was not sufficient to pay the tax the Treasurer was to collect the balance by action of debt. The real property of the banks was taxed as other real property was, but share-holders were not taxed on their shares.[1]

This tax on capital stock and hence on the state banks rather than on their stockholders obtained until 1866 when with the approval of the people expressed by a vote of 49,714 to 19,151,* a law was enacted which brought the taxation of the state banks into accord with that of national banks. This new law provided for a tax not on banks but on the stockholders, on the face

[1] *Laws of 1852*, ch. 479, sec. 16.
**Wisconsin State Journal*, Dec. 22, 1866.

value of their stocks, to be levied at the situs of the bank. Banks were required to keep in their offices lists of the names of stockholders, their residences and the number of shares held by each, which lists were to be open to the inspection of the tax assessors during business hours on every business day. The tax remained a lien on the stock until paid, and it applied to both national and state banks. A law of 1865 provided that when state banks became national banks they should continue to pay the tax on capital stock until 80 per cent of their notes had been retired.[2]

The creation of national banks made necesary in 1865 some provision for their taxation. Before taking up the state legislation on this subject it will be well to notice how the state is restricted by federal law. The National Bank Act of February 25, 1863 gave free rein to the states in the matter of the taxation of the banks to be chartered by the federal government, but the mandatory act of June 3, 1864 imposed the following limitations:

(1) the tax was to be on the shares of the stockholders, which shares were to be included in the personal property of the holders; but taxed at the situs of the bank;

(2) the tax on national bank shares was not to be higher than on other moneys in the hands of individual citizens;

(3) the tax was not to exceed that on the shares of state banks.

The act provided also that the states need not exempt the real estate of the banks and that the latter might be required to keep in their offices for the inspection of assessors lists of their stockholders and the residences of the same.

The act as amended in 1868 did not include the prohibition that the shares in national banks be not taxed higher than shares in state banks, but this change was of practically no significance since the prohibition relating to other moneyed capital remained in force. The significant change wrought by the amendment of 1868 was that relating to the time and place of the levy. This amendment allowed the state legislatures to determine the time and place of the levy except that the shares of non-residents must be taxed at the situs of the bank.[3]

[2] *Laws of 1866*, ch. 102; *Laws of 1865*, ch. 489, sec. 3.

[3] *12 statutes, C. 58, 665; 13 statutes, C. 106, 99*; cited in Judson, *On Taxation* (St. Louis, 1903), 297-299.

Before a return is made to our discussion of Wisconsin bank taxation, note should be taken of the decisions of the federal Supreme Court respecting national bank taxation. In case of the *Owensboro National Bank vs. Owensboro* the Court decided that the power of the states to tax national banks is limited to such method of taxation as Congress by express authorization permits.[4] Notwithstanding that a tax on the shareholder and not on the bank is authorized, the Court in the case of the *National Bank vs. Commonwealth* (of Kentucky) upheld a provision for compelling the bank to pay the tax for its shareholders, and in another case it was decided that where the bank has been made liable for the taxes on its shareholders the state may force payment by distraint of the bank's property. In a Pennsylvania case the Court held that a state's making a national bank agent for the collection of the taxes of its shareholders is a mere matter of procedure and constitutes no discrimination even if state banks in that state are not compelled to act as agents for the collection of taxes on their shareholders.[5]

The Wisconsin law of 1865 relating to the taxation of national banks provided for an annual tax of 1½ per cent on the *par value* of stocks. The law required banking associations to furnish to the assessors lists of their stockholders and the residences of the same and a statement of the amount of stock held by each. If such lists were not furnished by November 1, the assessors were authorized to examine the books and papers of the delinquent association. The owners of shares in national banks were obliged, whether living within or without the state, to pay to the State Treasurer before December 31, a tax of 1½ per cent on the par value of their shares, which tax constituted a lien on such shares until paid. The lien extended from the first of the preceding July. If the tax remained unpaid until February 1, it then became the duty of the State Treasurer to sell at auction the stock of the delinquent. Such sales were to take place not less than four nor more than eight weeks after

[4] *173 U. S.* 664; Other cases bearing on the question are *Davis vs. Elmira Savings Bank, 161 U. S.* 276, and *McCullough vs. Maryland, 4 Wheaton* 8, 297, 638, 690; all cited in Judson.

[5] *9 Wall,* 353. *First National Bank of Omaha vs. Douglas County, 3 Dillon,* 330. *Merchants' Bank vs. Penn., 167 U. S.* 461; cited in Judson, 304, 305.

the first notice of the same was published. However, at any time prior to December 1, a bank might pay the taxes of its stockholders and if it did so prior to November 1, a list of stockholders was not required. If the tax was not paid either by the stockholder or the bank before December 1, a penalty of 1 per cent was imposed. This penalty and the costs of advertising were to be paid out of the proceeds of the sale of the stocks. It was provided that whenever the rate of taxation on other moneyed capital should fall below 1½ per cent, the State Treasurer should reduce the bank stock rate to an equality with the rate on other moneyed capital. The real estate of national banks was taxed just as other real estate.

This law of 1865 did not work at all satisfactorily and consequently in 1867 was begun the enactment of a series of laws providing for pains and penalties that would enforce compliance with the law. A law of 1868 gave assessors full inquisitorial powers. Any person who when summoned by a justice of the peace or county judge, at the instance of an assessor, refused to be sworn or to answer questions pertaining to the value of bank stocks was to be punished by a fine of from $200 to $1,000. Assessors or collectors failing or refusing to carry out their part of the law were made punishable by a fine of from $1,000 to $2,000 or by imprisonment for from six months to one year. Presidents or cashiers of banks refusing to give assessors information were punishable by a fine of from $2,000 to $5,000. Provision was made also whereby any stockholder in a national bank might test the validity of the national bank tax law by beginning suit for the recovery of his tax, in the Supreme Court of the state.[6]

The validity of the law was established in 1869 in the case of *Van Slyke vs. the State.* The plaintiff, citing the forty-first section of the National Banking Act, "Provided further, that the tax so imposed under the laws of any state upon the shares of associations organized by this act shall not exceed the rate imposed upon shares in any of the banks organized under authority of the state where such association is located," maintained

[6] *Laws of 1868*, ch. 136.

that national banks could not be taxed on their shares when state banks were taxed on their capital stock, and that therefore the national bank taxes for the years 1865 and 1866 were invalid. The state contended that the tax of 1½ per cent on the capital stock of state banks was exactly equivalent to the tax of 1½ per cent on the shares of the national banks at par, unless that part of the stock of the state banks consisting of United States securities were exempt, but such part was not exempt because the tax on the state banks was only a royalty for the grant of their franchise. The Court sustained the state.[7]

The same year, 1869, it was provided that upon presentation to the proper bank of the certificates of sale issued by the State Treasurer, the bank stock purchased from that officer was to be transferred on the books of the bank to the person holding the certificate. Banks were given unrestricted authority to pay taxes for their stockholders and in case they did were to have a lien on the stock. The banks were ordered to retain out of dividends payable to stockholders the delinquent taxes for 1865 and 1866 and to pay the same to the State Treasurer. These were the taxes that the state attempted to levy on the national banks before the taxation of state banks was brought into harmony with that of federal banks. Any bank officer failing to retain such taxes out of dividends became personally responsible for the taxes, which were to be recovered from him by suit. The State Treasurer was again authorized to proceed to sell such share or shares as might be necessary to the payment of the delinquent taxes with interest from the time when they were so returned, at 12 per cent together with the costs and expenses of the sale.[8] In 1870 and in 1872 additional laws to compel payment of the unpaid national bank taxes of 1865 and 1866 were enacted. The law of 1872 proved effective. Soon after its passage the amount delinquent, $45,177.87, was paid into the State Treasury.[9] This law, entitled an "Act to facilitate a settlement with National Banks for taxes due for the years 1865 and 1866," was effective because it made concessions

[7] *23 Wis.* 655.
[8] *Laws of 1869*, ch. 167.
[9] *Governor's Message*, 1873, 8.

to the banks that were hardly more than fair. In the first place the law revoked all penalties for the non-payment of the taxes in question by providing that if within fifteen days after the passage of the act any delinquent national bank paid its taxes for the years 1865 and 1866 the treasurer of the state should execute a receipt in full. Taxes for 1865 were to be computed upon the capital stock of each bank organized before June 1, of that year and not afterward.* Shares representing an increase of capital stock and issued after June 1, were not to be taxed for that year. The same rule applied to taxes for 1866. If a state bank had become a national bank between January 1, and June 1, in either of the years it was to be taxed for that year as a national bank at a proportion of the full rate equal to the ratio of the remainder of the year to the whole year. Banks taking advantage of this law were permitted to take the amount of the tax out of the dividends to become due their stockholders and to charge interest at the rate of 10 per cent on the amount of the tax advanced.[10]

It has been shown that the law of 1866 provided for a tax of 1½ per cent on the value of both state and national bank stocks. In 1868 as a part of a general assessment law having in view a better administration of the tax laws it was provided that on demand of the assessors the president, cashier, or other officer in charge of an incorporated bank should give to the assessors before June 1, a list of its stockholders, their residences, the amount of stock held by each on the first of May preceding, also the "true value" of the stock of the bank on May 1, and the highest and lowest prices at bona-fide sales of the stock the preceding year. If the assessor considered the valuation given too low he was to indicate at the foot of the statement what he believed to be the true value. If the officer in charge of the bank refused to make out and deliver to the assessor the list indicated above, he became personally responsible for the tax and the town or city treasurer was in duty bound to sue for the same. The following oath was required of every bank officer making a statement,

*Taxes were levied June 1.

[10] *Laws of 1872*, ch. 23 (approved Feb. 28).

"I, ..., do solemnly swear that I am ....., of [name of bank], that the annexed is a true statement of the names of all the stockholders in said bank on the first of May A. D. 18.., and of the amount of stock then held by each of them, and of the highest and lowest *bona-fide sale* of any of said stock during the preceding year known to me, and that the value set down in said statement is the true value thereof, such as I verily believe any stockholder desiring to sell would be willing to accept in full payment."[11]

The bank tax law now in force was enacted in 1903 and amended in 1905. The shares of stock of every bank, state, national or private, are taxable to the shareholders at their true cash value and at the rate on other personal property in the taxing district. The tax is levied at the situs of the bank and constitutes a lien on the shares until paid. If the tax is not paid the officer having authority to collect the same may sell the shares of the delinquents or such part of the shares as will yield a sum sufficient to satisfy the tax. A bank may pay the taxes levied on its stockholders and if it does so it has a lien on the shares for the amount of the tax together with interest on the same and the expenses connected with the payment. A bank may pay such taxes out of earnings or other available resources. In case a bank owns the building that it occupies the assessed value thereof together with the assessed value of the land on which it stands, if owned by the bank, is deducted from the true cash value of the shares and the value of each share for assessment purposes is obtained by dividing the result by the number of shares.[12] The Tax Commission recommended in 1901 that the taxation of surplus invested in real estate be abolished, as the value of such property enters into the value of the shares. Taxing such value in the real estate and in the shares also constitutes double taxation.[13] The capital of private banks is assessable as personal property to the several owners. The law defines a private bank as any person, co-partnership or corporation not organized as a banking as-

[11] *Laws of 1868*, ch. 110. This law applied also to unorganized banks.
[12] *Laws of 1903*, ch. 72; *Laws of 1905*, ch. 302.
[13] *Report of Tax Commission*, 1901, 124.

sociation that advertises as a bank or is engaged in banking business or receives funds on deposit or for safe keeping or buys and sells exchange as a regular business. The last law enacted on the subject of bank taxation declares that the taxes provided for in the law noted above are in lieu of all taxes on capital, surpluses, properties and assets of banks, except that no real estate owned by banks shall be exempt.[14]

As almost everywhere else, if not everywhere else, in Wisconsin banks are paying and have paid relatively high taxes. In 1862 the Governor of the State, while protesting against the lowness of the tax on railroads, expressed a firmly held belief that the bank tax was sufficiently burdensome, as in many cases the real capital of a bank was much less than its nominal capital on which banks were then taxed. Representatives of the national banks showed to the satisfaction of the Tax Commission of 1867 that, as property in general was assessed at only one-third to one-half of its real value, the owners of bank stock were paying on such property a tax 50 per cent to 100 per cent higher than the taxes on other property.[15] Statistics gathered by the Tax Commission in 1902 show both that the banks are taxed relatively high and that there were great increases in 1900 and 1901. The ratios of assessed to par value in 1899, 1900, and 1901 were respectively 77.81 per cent, 80.8 per cent, and 98.94 per cent. The ratios of assessed value to capital and surplus were 63.73 per cent, 64.58 per cent, 79.29 per cent; the ratios of assessed value to capital, surplus and undivided profits were 58.56 per cent 59 per cent and 71.32 per cent.[16] It is evident that the banks relatively speaking are taxed very high in Wisconsin.

II. Taxation of Insurance Companies, Loan and Trust Companies, Building and Loan Associations

In Wisconsin the tax on insurance companies has always been and is now a receipts tax. At first, taxation was directed against foreign companies only. A law of 1859 provided that

[14] *Laws of 1905*, ch. 302.
[15] *Report of Tax Commission*, 1867, 10; *Governor's Message*, 1862, 17.
[16] *Report of Tax Commission*, 1903, 221.

every foreign life insurance company doing business in Wisconsin should pay annually a license tax of 3 per cent of the premiums received in the state in the year preceding. Every company that had not been doing business in the state prior to the time when it applied for its license was obliged to pay for the first year $500. The rate was changed to 2 per cent in 1861, but was again made 3 per cent in 1862.[17] The Supreme Court of the state has upheld the tax on foreign insurance companies as a payment for a license precedent to doing business in the state. In the case of the *State ex rel. Drake vs. Doyle*, Chief Justice Ryan said, "Save by voluntary license of the state, the insurance company has no right to carry on business within the state. . . . Authorizing such license out of its mere discretion it was competent for the legislature to impose any conditions, reasonable or unreasonable, and to provide for revocation upon any cause or no cause, in any manner that it may see fit." In two other cases the Court has expressed substantially the same opinion.[18]

It was provided in 1867 that life insurance companies organized in Wisconsin should pay an annual tax of 1 per cent of all cash receipts in the state. This tax was in lieu of all other taxes, but in 1869 was made in lieu of all other taxes except those on real estate.[19] Three years later a law for the regulation of life, and life and accident insurance companies provided that such companies should pay an annual license fee or tax of $300. Companies organized under the laws of Wisconsin were obliged to pay in addition a tax of 1 per cent on all premiums received in the state in the preceding year. This tax on domestic companies was increased to 2 per cent in 1878 and in 1887 the law of 1870 as amended in 1878 was made applicable to live-stock insurance companies. This receipts tax was in lieu of all other taxes except taxes on real estate. In 1882 in-

[17] *General Laws 1859*, ch. 190, sec. 5.

[18] *40 Wis.* 175; *Lewis vs. American S. and L. Assoc., 98 Wis.* 203; *Traveler's Insurance Company vs. Fricke, 99 Wis.* 367.

[19] *Laws of 1867*, ch. 158, sec. 5; *Laws of 1869*, ch. 181; a law of 1858 provided that no one should be allowed to carry on insurance business in Wisconsin unless he had a certificate from the governor that his company had complied with the insurance laws, for which certificate $3.00 is to be paid to the governor.

surance companies organized for charitable and benevolent purposes and not for profit were exempted from fees and taxes.[20]

A new law affecting life insurance companies was enacted in 1899 and is now in force except as amended in 1901. This law provided that life insurance companies organized under the laws of the state, with the exception of purely assessment companies and stipulated premium plan companies, should pay annually a license tax of 1 per cent of their gross income from all sources except United States bonds and real estate. The amendment of 1901 raised the rate to 3 per cent, but exempted premiums collected outside of the state from non-residents; however, this amendment provides that dividends paid to policy holders should not be deducted from premiums. By the law of 1899 companies organized outside of the state were required to pay a tax of 1 per cent of all premiums and premium notes received from citizens of Wisconsin, and no deduction of dividends was permitted. Assessment companies, except fraternal organizations were required to pay an annual tax of $300. The amendment of 1901 provides that foreign companies shall pay $300 if the 1 per cent method does not yield $300. Failure to pay insurance taxes when due works a forfeiture of 15 per cent of the tax, recoverable along with the tax by suit. The law of 1899 was retroactive as it applied to companies that had already taken out licenses at a lower rate for the year March 1899 to March 1900.[21] By a law of 1907 domestic companies pay a tax of 3 per cent on income in Wisconsin less income from tax-paying real estate.*

Wisconsin legislation respecting life insurance companies has since 1870 discriminated against home companies. The leniency of the state toward foreign companies is due probably to a fear of retaliation by other states. The law of 1901 provided for a tax of 3 per cent on domestic companies. The tax on foreign companies was made 1 per cent. or a minimum of $300, to be

[20] *Laws of 1870*, ch. 59, sec. 27; *Laws of 1878*, ch. 256; *Laws of 1887*, ch. 309; *Laws of 1882*, ch. 281; accident companies doing business on the mutual assessment plan paid the same fee and taxes as other accident companies. *Laws of 1887*, ch. 503.

[21] *Laws of 1899*, ch. 326; *Laws of 1901*, ch. 21.

* *Laws of 1907*, ch. 656.

increased in the case of any foreign company whose home state should discriminate against Wisconsin companies. Of the premiums collected in Wisconsin in 1903, domestic companies collected 27.9 per cent; foreign companies, 72.1 per cent. Of the taxes paid, domestic companies paid 84 per cent; foreign companies, 16 per cent. Granting that the amount of premiums collected is not the best basis of taxation, since a company with very large assets may collect a relatively small amount in premiums, let us see what statistics respecting the investment element in policies reveal. All policies have on equity in the assets of the company that issues them. This equity for each state may be determined by finding the ratio of the company's insurance liabilities in the state to its total insurance liability. By this method the cash value of the policies of citizens of Wisconsin in the old line companies was found to be approximately $40,000,000, of which 35 per cent is in domestic companies and 65 per cent, in foreign companies. Under the law of 1901, one domestic company paid in 1903 taxes equivalent to a tax of 1.6 per cent on the cash value of its policies in the state; while some of the foreign companies paid a tax of less than 1-10 of 1 per cent. The injustice of the present Wisconsin method of taxing life insurance companies is apparent. A just tax on such companies would not discriminate between domestic and foreign companies and it would be a tax on the equity of the policies in the assets of the companies. Such a tax levies upon both reserves and surpluses;* it is equivalent to taxation of the policies on the basis of their investment value in the hands of the policy holders. To avoid double taxation the value of real estate owned by a company should be deducted from its gross assets; also the value of its United States bonds. Such a method would tax equally all policy holders in the state, would remove the in-

*In 1898 the Tax Commission urged that life insurance companies be taxed on their surpluses, and in reply to the argument that such a tax would increase the rate of insurance or diminish the dividends of policy holders it was pointed out that policies often represent property of great value to their holders and that there is no reason why such property should be exempt. Furthermore, it was very properly contended that accumulated surpluses are often in excess of the demands of safety to the policy holder and that such capital competes with capital subject to much heavier taxation. *Report of Tax Commission*, 1898, 151.

centive to insure with a foreign company rather than with a domestic one, and in Wisconsin would increase the revenue of the state. In 1904 the life insurance companies paid the state $330,464. It has been estimated that at the average rate of taxation and on the equity in assets basis they would pay about $400,000. If the average rate is too high a lower one might be charged, as in Massachusetts where an excise tax of ¼ of 1 per cent on the cash value of policies is levied.[22]

The Revised Statutes of 1858 provided that every foreign fire insurance company doing business in any city or village in which there was a regularly organized fire department should pay to that department on the first of February in each year 2 per cent of the premiums collected in that city or village in the preceding calendar year. In 1851 a similar law had been enacted with reference to the city of Kenosha. Similar instances are probably to be found in the local laws. In 1878 this provision was made applicable to companies organized in the state.[23] This local tax of 2 per cent was resisted on the ground that it violated the constitutional rule of uniformity, but in 1862 in the case of the *Fire Department of Milwaukee vs. Helfenstein* the Supreme Court of the state held this 2 per cent payment was not a tax but a fee pertaining to the exercise of the police power of the state, and hence was not in contravention of the rule of uniform taxation.[24] By a law of 1907, fire insurance companies are required to pay a tax of ¼ of 1 per cent of gross premiums and assessment receipts in Wisconsin for the purpose of maintaining the department of State Fire Marshal. When the condition of this fund warrants it, part or all of this tax is to be omitted.*

The law of 1870 providing for the incorporation of Fire and Inland Navigation Companies prescribed an annual license tax of 2 per cent of total gross receipts within the state. Home companies were, however, permitted to subtract office expenditures and office salaries from their gross receipts. This 2 per

[22] *Governor's Message* 1905, 17-20.
[23] *Revised Statutes* 1858, ch. 65, sec. 1; *Laws of 1878*, ch. 303.
[24] *16 Wis.*, 136.
* *Laws of 1907*, ch. 228.

cent tax was in lieu of all other taxes except those on real estate. This law did not prohibit cities and villages from collecting the 2 per cent fire department tax. Agents of companies were obliged, under penalty of forfeiting $100, to execute bonds to the fire departments to secure the payment of this tax.[25]

Accident and bonding insurance companies were in 1880 declared subject to the same fees and taxes as fire insurance companies; and foreign hail insurance companies, as foreign fire insurance companies, but the hail insurance law was repealed in 1899.[26]

The law respecting the 2 per cent payment by fire insurance companies was not well observed, consequently in 1887 a law was enacted providing that the commissioner of insurance should, if the tax from any company remained due for thirty days after notification to pay had been given, upon complaint supported by satisfactory proof, revoke and cancel the license of the delinquent company. A unique feature of this law was that property owners having insurance in any company not licensed were liable to the fire department of their city or village for 2 per cent of their insurance premiums to be recovered by civil action.[27]

The law relating to the taxation of fire and inland navigation insurance companies was changed in 1905. Such companies, except town, church, druggists', lumber dealers', hardware dealers', and city and village mutual insurance companies organized under the laws of the state, are required to pay on January 1, of each year a tax of 4 per cent of the amount of gross premiums received in the year preceding, provided, however, that from the amount of such gross income may be deducted the amount paid by the company for the reinsurance of risks in the state and the amount of return premiums and actual losses less reinsurance losses paid in the preceding year. The payment of this tax licenses for one year the company paying it.[28]

The laws governing fire insurance companies were made ap-

[25] *General Laws 1870*, ch. 56, secs. 33, 34.
[26] *Laws of 1880*, ch. 105.
[27] *Laws of 1887*, ch. 486.
[28] *Laws of 1905*, ch. 325.

plicable, in 1885, to foreign surety companies, that is they were taxed 2 per cent of their receipts in Wisconsin. A law was enacted in 1901 authorizing the transaction of marine insurance in the state upon the principle commonly known as the Lloyds. Corporations or companies transacting such business are obliged to pay an annual tax of 2 per cent of the premiums received the preceding year and also certain fees.[29]

It was provided in 1897 that casualty insurance companies, suretyship companies, and companies insuring live-stock or bicycles should pay a license tax of 2 per cent of their premiums in the state. In 1899 it was enacted that casualty insurance companies organized on the mutual plan should pay an annual fee of $25 on filing their annual statement with the commissioner of insurance and also an annual license tax of 2 per cent of gross receipts from premiums.[30]

A law was enacted in 1891 providing that trust, annuity, guaranty, safe deposit, and security companies should pay on annual license tax or fee of $300 and in addition 2 per cent of their net income in the preceding calendar year. These taxes were in lieu of all other taxes except taxes on real estate. In 1905 the taxes were made $500 and 3 per cent. There was but one vote in the Assembly against this increase.[31] An increase had been recommended by the Tax Commission of 1898, which observed that complaint was made that loan and trust companies bore a very light tax. The companies maintained that their business was restricted and that they had no such opportunities for making money as have banks. On the other side it was contended that such companies lend large sums on bonds and mortgages and act in direct competition with banks. The commission, while seeing considerable force in the plea of the companies, yet recommended an increase in the tax.[32]

All mutual investment, trust, and guaranty companies are exempt from taxation on their capital stock, securities taken for moneys advanced to their members, and installments paid.[33]

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[29] *Laws of 1885*, ch. 443; *Laws of 1901*, ch. 249.
[30] *Laws of 1897*, ch. 277; *Laws of 1899*, ch. 65.
[31] *Laws of 1891*, ch. 263, sec. 10; *Laws of 1905*, ch. 442.
[32] *Report of Tax Commission*, 1898, 147.
[33] *Laws of 1897*, ch. 380, sec. 1038, pars. 24, 31, 32; *Laws of 1899*, ch. 216.

CHAPTER XII

INHERITANCE TAXES

The history of inheritance taxation in Wisconsin may perhaps be said to date from the year 1868, when it was enacted that in counties in which the county judge did not have civil jurisdiction, executors, administrators or guardians should pay into the county treasury sums varying with the value of the estate probated. The taxes or fees were as follows:

On estates of over $1,000 in value and not over $2,000, a tax of	$20
On estates of over 2,000 in value and not over 5,000, a tax of	30
On estates of over 5,000 in value and not over 8,000, a tax of	40
On estates of over 8,000 in value and not over 10,000, a tax of	50
On estates of over 10,000 in value, a tax of	75

It may of course be argued that these payments were only probate fees. The law of 1868 was repealed in 1872, but in 1877 the same schedule was adopted for estates probated in Milwaukee County. In 1889, however, the law of 1877 was repealed and it was provided that in counties having a population of over 150,000, of which Milwaukee was the only one, executors etc., should make the following payments to the county treasurers: on all estates inventoried and appraised at $500,000 or between 3,000 and 500,000, 1-2 of 1 per cent; on all excess over $500,000, 1-10 of 1 per cent. The amount of specific liens was to be deducted in arriving at the taxable value. The year after its passage the Supreme Court of the state in the *State ex. rel. Sanderson vs. Mann* declared the law of 1889 unconstitutional. The amounts of the payments provided for by the law precluded their being fees for probation. They were taxes. The law could not be sustained under the constitutional clause providing for a tax on all civil suits commenced or prosecuted in municipal, inferior, or circuit courts, because the settlement of estates in courts of

probate is essentially proceedings *in rem* and not civil suits "commenced and prosecuted" within the meaning of the constitution. The court in this case did not express an opinion as to whether a succession or inheritance tax would be valid in Wisconsin, but it held that the tax in question could not be valid, since it was a tax on the whole estate at its appraised value regardless of whether it was solvent or insolvent, and furthermore it was in violation of the constitutional provision prohibiting special or private laws, for it applied only to Milwaukee County and only to a certain class of estates in that county. Justice Taylor dissented, holding that the payment was not a tax and saying that if it were he should not be certain that it was unconstitutional.[1]

The taxes provided for by the laws of 1868 and 1877 bore very heavily on small estates. An estate of $1,100 paid a tax of 1 9-11 per cent; those of $1,500, 1 1-3 per cent; of $2,000, 1 per cent; of $15,000, 1-5 of 1 per cent; of $50,000, 3-20 of 1 per cent. The law of 1889 likewise provided regressive rates and it is to be criticized also because the tax was payable upon the return of the inventory and appraisal to the court, before any steps could be taken legally to convert any of the property of the deceased into money or use could be made of any of the funds left by the deceased. These earlier laws did apply throughout the state and the payments required by them were very much like probate fees.

In 1899 an inheritance tax law was enacted to offset in so far as possible the evasion of the personal property tax. This law provided that in certain cases a tax be imposed upon the transfer by will or by the intestate laws of the state of personal property worth $10,000 or more or any interest therein or income therefrom in trust or otherwise to any person, legal or natural, except religious, charitable or educational organizations that were to use the property received for the purposes for which they had been organized. The following were the circumstances under which such a tax was to be levied:

1. When the transfer was by will or by the intestate laws of

[1] *Laws of 1868*, ch. 121; *Laws of 1872*, ch. 40; *Laws of 1877*, ch. 98; *Laws of 1889*, ch. 176; *76 Wis.* 469.

Wisconsin from any person dying possessed of personal property while a resident of the state;

2. When the transfer was by will or intestate law of personal property within the state and from a decedent who was not a resident at the time of his death;

3. When personal property was transferred by a resident or by a non-resident whose property transferred was within the state, through a bargain, sale, or gift made in contemplation of the death of the vendor or donor and to become effective at or after his death;

4. The tax was to be imposed when any corporation became beneficially entitled, in possession or expectancy, to any personal property or the income thereof by any such transfer either before or after the enactment of the inheritance tax law;

5. When any person or corporation exercised a power of appointment derived from any disposition of property made either before or after the enactment of the law, such appointment was regarded by the law as tantamount to a taxable transfer. This fifth provision was added to by an amendment of 1901. The rates were graduated according to the degree of relationship of the beneficiary to the decedent. When the transfer was to a father, mother, husband, wife, child, brother, sister, the wife or widow of a son, or the husband of a daughter, or to any child or children legally adopted, or to any person to whom the donor had stood for at least ten years preceding his death in the mutually acknowledged relation of parent—the safeguard was added in 1901 that the relationship must have begun before the child's fifteenth birthday—or to any lineal descendent of the donor born in lawful wedlock—the amendment of 1901 added, or any lineal descendent of any lawfully adopted child, or any lineal descendent of a brother or sister,— the rate was 1 per cent. In all other cases it was 5 per cent. The tax was computed on the clear market value of the property transferred and became due at the time of transfer except in cases in which a future contingency was necessary to the determination of the true value of the property or in which the transfer was conditioned, in which cases the tax became due when the beneficiary came into actual possession. A deduction of debts from the value of the

property was allowed. A discount of 5 per cent was allowed and deducted from the tax if the tax was paid within six months after it became due—within one year by the law of 1901. If the tax was not paid within eighteen months interest at the rate of 10 per cent, was charged from the time when it became due. If necessary litigation was responsible for the delay only 6 per cent was charged and in any case if a bond was given to insure payment only 6 per cent was charged. From the appraised value of the property there was to be deducted a fair valuation on all the property transferred and taxable under the inheritance tax law upon which the donor or intestate had paid a personal property tax the preceding year. It was the manifest purpose of this law to offset, in so far as possible, evasions of the personal property tax.

In the case of the transfer of any shares of the capital stock of any corporation that owned real estate, the proportionate market value of its real estate taxed as such was deducted from the appraised value of the shares transferred. This provision was changed by the amending law of 1901 so that the deduction was made of the assessed value of the real estate of corporations organized under the laws of the state and engaged in the business of buying, owning, or selling real estate.

It was stated expressly in section 19 of the law that the words "property" and "estate" as used therein meant the personal property of the testator or intestate and not the shares of the same received by individual beneficiaries. Accordingly an inheritance of $5,000 from a personal property estate of $9,000 paid no tax, while the same inheritance from an estate of $10,000 paid a tax, even though the two beneficiaries stood in the same relation to their respective donors or intestates. Therein lay the great weakness in the law, as will be pointed out. This law applied to all personal property within or without Wisconsin over which the state has taxing jurisdiction.

County treasurers were allowed to retain for the use of their counties 15 per cent of the tax; the remainder less costs of collection went into the State Treasury.[2]

The inheritance tax law of 1899 came to a test before the

[2] *Laws of 1899*, ch. 355; *Laws of 1901*, ch. 245.

Supreme Court of the State in 1902 in the case of *Black vs The State.* The plaintiff contended that the law was in violation of the state rule of uniformity and of that clause of the fourteenth amendment to the Constitution of the United States that guarantees equal protection of the laws. It was conceded that a succession tax is constitutional in Wisconsin and that a classification on the basis of degrees of relationship, or relationship and no relationship is permissible, but it was correctly maintained that the constitutions of the state and the nation demand that all within a given class be treated alike. A law that does not meet this demand is discriminating and arbitrary and hence invalid. The inheritance tax law of 1899 was such a law, since it levied a tax on the whole estate and not on the respective amounts received by the beneficiaries.

In handing down its decision the Court observed that the federal Supreme Court had pronounced an inheritance tax one not on property but on succession to property.[3] It was declared to be immaterial whether this law of 1899 violated the rule of uniformity, as it was clearly invalid because in contravention of the fourteenth amendment, since it treated differently persons of the same class. For example, a person receiving $1,000 or $5,000 from a $9,000 estate paid no tax; while one receiving $1,000 from a $10,000 estate paid a tax, even though the two persons stood in the same relation to their respective donors or testators. The Court seemed inclined to believe that an inheritance law might properly come under the general taxation clause of the constitution and that classsifications between lineal and collateral relatives does not violate the rule of uniformity, and that a reasonable exemption of small estates is within the law. It was quite decided in its opinion that such a law when bearing equally upon all persons within the same class is within the equal protection of the laws clause of the fourteenth amendment. The law of 1899 was condemned because it operated differently as to persons of the same class and hence was in contravention of the fourteenth amendment.[4]

It might have been unfortunate for the cause of tax reform

[3] *Magoon vs. Illinois T. and S. Bank, 170 U. S.* 283.
[4] *113 Wis.* 205.

that the Court did not hold decisively that an inheritance tax is within the rule of uniformity. Its decision that such a tax is not one on property but on the succession to property may be sound law, but unfortunately it left the way open for the contention that therefore such a law is in violation of that part of the taxation clause of the constitution that provides that taxes shall be upon property, which has been very strictly construed by the Court. However, in 1906, the Court upheld an inheritance tax as a succession tax. This decision, which is of far-reaching importance, is discussed later in this chapter.

With respect to inheritance taxes some other decisions, quite in accord with the Wisconsin decision of 1902, may well be noted. In the case of the *State ex rel. Schwartz vs. Ferris*, the Ohio Supreme Court decided that progressive rates according to the values of estates were in conflict with the state constitutional provision that government is instituted for the equal benefit and protection of the people. In Missouri a tax similar to the Wisconsin tax was declared invalid because it violated the constitutional provision that taxation shall be "uniform upon the same class of subjects within the territorial limits of the authority levying the tax." The Supreme Court of the United States held valid the Illinois law providing for discriminating progressive rates graduated according to degree of relationship and amounts inherited. The Court declared that the fourteenth amendment requires merely that all persons shall be treated alike under like circumstances and in like conditions both in the matter of privileges granted and liabilities imposed.[5]

The present Wisconsin inheritance tax law was enacted in 1903. It provides for a tax in certain cases upon the transfer of both real and personal property or any interest therein or any income therefrom in trust or otherwise to any person, association or corporation, except corporations organized under the laws of Wisconsin solely for religious, charitable, or educational purposes, provided that the property transferred to such corporations is to be used exclusively for the purposes for which they were organized. An amending law of 1905 exempts transfers

[5] Vide Judson, *Taxation*, chapter on Equality and Uniformity in Inheritance Taxation.

to counties, towns or municipal corporations within the state of property to be used exclusively for county, town, or municipal purposes.

A tax is laid on all transfers to take place after the death of the grantor or vendor or made in expectancy of his death or resulting from the operation of the intestate laws of the state of all property, real or personal, with certain exemptions, to be explained, as well as total exemption in the cases in which the beneficiary is a religious, charitable, educational or public corporation and the property is to be used for corporate purposes.

The following exemptions are made, property to the value of $10,000 when transferred to the widow of the decedent, of $2,000 when transferred to the husband, lineal issue, lineal ancestor of the decedent or any child lawfully adopted, or any child to whom the decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of parent, provided that such relationship had begun at or before the child's fifteenth birthday and had been continuous for ten years thereafter, or to any lineal issue of such adopted or acknowledged child. In cases of such transfers the rate is 1 per cent on the value of the property over and above the exempted value, when the value of the property received does not exceed $25,000. On all in excess of $25,000 the rate is a graduated multiple of the primary rate of 1 per cent, as will be explained fully later. Property of the clear value of $500 is exempt when transferred to a brother, sister, a descendent of a brother or sister of the decedent, the wife or widow of a son, or to the husband of a daughter. In the case of such transfers when not in excess of $25,000 the rate is 1½ per cent. Property to the value of $250 is exempt when transferred to an aunt or an uncle or to the descendents of the same. In such cases the primary rate is 3 per cent. Property to the value of $150 is exempt when the transfer is to the brother or sister of a grandfather or grandmother of the decedent. Here the primary rate is 4 per cent. Property to the value of $100 is exempt when the transfer is to persons of any other degree of consanguinity than those mentioned above or to strangers or

to a body politic or corporate. The rate in such cases is 5 per cent.

The rates indicated above are called primary rates and apply to transfers of $25,000 or less. The rates on values in excess of $25,000 are as follows: on all in excess of $25,000 up to a total value of $50,000, 1½ times the primary rate; on all in excess of $50,000 up to $100,000, twice the primary rate; on all in excess of $100,000 up to $500,000, 2½ times the primary rate; on all in excess of $500,000, three times the primary rate.

Thus the tax is progressive and is graduated with reference both to degree of relationship and the amount received by the beneficiary. It is stated expressly in section 24 of the law that the words "estate" and "property" are used to designate the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to the individual legatee, devisee, heir, next of kin, grantee, donee, vendee or successor, and includes all personal property within or without the state, provided of course in the latter case the testator or intestate is a resident of the state.

The provisions as to the time when the tax is due and the conditions of payment are the same as in the law of 1899 as amended by the law of 1901. The county retains each year 5 per cent of the first $50,000 collected; 3 per cent of the next $50,000; and 2 per cent of all additional; the remainder goes to the state.[6] The state receipts from July 1, 1904, to January 1, 1905, were $26,403.84. The state receipts for the fiscal year ending June 30, 1906, were $103,954.74.

Neither the law of 1899 nor that of 1903 has been well administered. Many county judges have questioned the constitutionality of the law and consequently, as a prominent county judge observed to the writer, the law has not been well administered because of a lack of zeal for its administration upon the part of many a county judge. Furthermore, local authorities are prone to look with indulgence upon under-valuations of property inherited by their neighbors. However, a better administration of the law may be expected in the future, as the

[6] *Laws of 1903*, chs. 44, 249; *Laws of 1905*, ch. 96.

Supreme Court of the State has just pronounced the inheritance tax law constitutional.

This decision was reached in the case of *Nunnemacher as trustee, etc., vs. the State of Wisconsin,* which was finally passed upon June 21, 1906. On three grounds the plaintiff in this case maintained that the inheritance tax was unconstitutional:

(1) The right to take property by inheritance or by will is a natural right protected by the Constitution, which cannot be wholly taken away or substantially impaired by the legislature;

(2) The Constitution of this state limits the power of taxation to property only, while the inheritance tax is an excise levied upon a right or privilege and hence unconstitutional;

(3) Even if the legislature has power under the Constitution to levy such a tax, this law is in violation of the constitutional rule of uniformity.

As to the first argument of the plaintiff, a majority of the Court, in acknowledged opposition to the decisions of all other courts, took the remarkable and self-contradictory view that while legislatures may prescribe lines of descent, may determine what persons may receive as heirs or devisees, and may include or exclude collateral relatives, yet inheritance rights are natural, inherent rights, and are not as other courts have held purely statutory rights. It is clear that the learned Court confuses property with possession. However, the Court held that the general principle of inheritance taxation may be justified under the power of reasonable regulation and taxation of transfers of property. The second contention against the law was that since the only taxation clause in the Constitution prescribes that "taxes shall be levied upon such property as the legislature shall prescribe" by the rule of *expressio unus est exclusio alterius* the Constitution forbids the levy of any taxes except on property, whereas the inheritance tax is an excise on the right to receive property. The Court, declaring the gross receipts tax on railroads and all other special forms of taxation to be license and not property taxes, held that the Constitutional clause in question governed the taxation of property alone and was not intended to prohibit the taxation of privileges or occupations. The Court interpreted the clause as if it read, "The rule of tax-

ation shall be uniform upon such property as the legislature shall prescribe." Consequently an inheritance tax treating all of a class in the same way is valid. According to the Court the clause "taxes shall be upon such property as the legislature shall prescribe," means merely that the legislature may determine what property shall be taxed and what exempted. As to the third point in the plaintiff's argument the Court held that the rule of uniformity when applied to excise taxes means merely that there shall be no unjust classification, and that the inheritance tax law neither in providing different rates according to relationship to the deceased nor according to the size of the legacy works unjust classification. Thus the Wisconsin inheritance tax law has been upheld by the Supreme Court of the State as an excise.

There were two dissenting opinions. Chief Justice Cassoday, averring that the several exactions made by the law are each and all based upon and measured by property, declared the inheritance tax law to be a tax on property within the meaning of the Constitutional clause, "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." In his opinion, classification can be based upon "real differences affording rational ground for classification," but classification cannot be based upon mere differences in value as in the act in question. The Chief Justice declared such classification to be purely arbitrary and highly destructive of the equal rights guaranteed by the Constitution.

Justice Dodge agreed with the majority of the Court in their opinion that the "property" clause was intended merely to give the legislature the right to tax property and to exempt other property, and does not preclude taxation of transfers of property or of rights or privileges, but he declared against the constitutionality of the inheritance tax. While asserting that the uniformity clause was not essential to his conclusion, he nevertheless indicated very clearly that he regards the inheritance tax law as in violation of that clause. His contention is, however, that the progressive feature of the law is in violation of Sec. 1, Art. I of the State Constitution wherein equality before the law is guaranteed. He said, "Nothing seems to me more an outrage upon equal rights than discrimination by law

in favor of or against either the poor or the rich by reason of that fact, and nothing seems more to threaten the permanence and safety of society." He fears that the principle of progression sustained in the law under consideration may be reversed and in its reversed form become an instrument for the oppression of the weak and poor by the strong and rich. The learned Justice fails to see that discriminations so called against the rich may be regarded as necessary to the permanence of society.[7]

The Court based its decision that the legislature is not restricted to taxing property, upon two grounds; first the debates of the Constitutional Convention, and second, upon the history of taxation in Wisconsin. In the opinion of the writer neither affords a firm foundation for the construction placed by the Court upon the taxation clause of the Constitution. A careful study of the debates of the Convention both in the Journal of the Convention and as presented in the argument of the Court convinces the writer that it was the intention of the Convention to confine taxation to property. Nor can the writer agree with the learned Court that a different construction has in the history of Wisconsin taxation been placed upon the clause. Any excise taxes that have been levied have been justified under the police power of the state. The writer agrees with Chief Justice Cassoday in his contention that the gross receipts tax on the railroads was a tax on property and not an excise.* It seems to the writer that the Court has ascribed to the Constitution undue elasticity in order to justify a tax that can be justified as a property tax, in perfect conformity with the rule of uniformity. An inheritance tax may be and generally is regarded as an excise upon the right to receive property by will or through the operation of the intestate laws, but it may just as properly be regarded as a tax levied upon property when it is so transferred. As for the rule of uniformity the Wisconsin law is clearly constitutional, since it makes no unreasonable discriminations; it treats alike all of the same class and all in like circumstances.

[7] January Term, 1906.
* Vide Chapter II, Part II.

THE INHERITANCE TAX.

Exemptions.	Relationship.	Primary rate.
$10,000	Widow	1 per cent.
2,000	Husband, lineal issue, ancestor, adopted child	1 per cent.
500	Wife or widow of son, husband of daughter, brother, sister, descendent of brother or sister	1½ per cent.
250	Aunt, uncle, descendent of aunt or uncle	3 per cent.
150	Brother or sister of grandfather or grandmother	4 per cent.
100	Any other relative, strangers, bodies politic or corporate	5 per cent.

Secondary Rates:
Over $25,000 and up to $50,000, 1½ times primary rate.
Over 50,000 and up to 100,000, 2 times primary rate.
Over 100,000 and up to 500,000, 2½ times primary rate.
Over 500,000 ....., 3 times primary rate.

CHAPTER XIII

POLL TAXES

Almost from the beginning of Wisconsin's history as a separate political unit, in 1836, poll taxes have been levied within its borders. This tax, now a thing of the past in many parts of the state, is sanctioned by custom and tradition rather than by the Constitution, which in fact seems to forbid such a tax since it provides that taxes shall be on property. However, an eminent authority observes of the poll tax, "while it is in its nature a tax, it partakes, to some extent at least, of a police regulation. Neither in common speech nor in the customary revenue legislation would a burden of this nature be understood as embraced in the term tax; and statutory provisions for assessment are not therefore applicable to it unless made so in express terms."[1] The Territorial law of 1836 providing for the incorporation of towns made it incumbent upon males between the ages of 21 and 60 years of age to labor on the streets, roads, and alleys for at least two days in the year, or to pay $1 each in lieu of such labor.[2] In some places the poll tax was higher. The town of Potosi in Grant County was in 1841 authorized to levy a poll tax of $3, and the village of Geneva in 1844 was authorized to levy one of $2. In Potosi men between the ages of 21 and 50 were subject to the tax or road service in lieu thereof; in Geneva, men between 21 and 55.[3] A general highway law of 1837 provided that all males between the ages of 21 and 50 years, except those exempted and excused by the board of commissioners for good cause, should work two days in each year on the public highway. The revised statutes of 1839 specify

[1] Cooley, *On Taxation*, (third Ed.), 16.
[2] *Laws of Wis. Terr.*, 1836, 68.
[3] *Laws of Wis. Terr.* 1840-41, 87; ibid., 1843-44, 77.

that members of companies of mounted riflemen and dragoons are exempt. The law incorporating the City of Burlington provided that poll taxes should be applied to the repair of streets and to no other purposes.[4] An early law provided that all real estate should be taxed for the opening and working of highways at a rate not to exceed 1 per cent and that this tax might be commuted into labor at the rate of $2 a day.[5] Such was the character and scope of poll taxes in the Territorial period.

Before passing on to poll taxes in the state of Wisconsin it will be well to note briefly two or three court decisions relating to such taxes. In Maryland it has been held that compulsory labor on the highways with the privilege of substituting cash payment does not constitute a poll tax.[6] In Florida it has been decided that the clause in the constitution providing that "the mode of levying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property that he has in his possession" does not prohibit the levy of a poll tax payable in labor.[7] In Nebraska it has been held that the legislature in delegating taxing powers to cities, etc., is not confined to those objects of taxation which a section of the constitution empowers the legislature to tax.[8] This last decision is in accord with the Wisconsin decision respecting local assessments.

The state poll tax law enacted in the first year of the state's existence provided that every male inhabitant between the ages of 21 and 50 years, excepting persons of color, paupers, idiots, and lunatics, should pay a highway tax of 75 cents. Highway taxes including both the poll and the property tax might be commuted into labor. It was stipulated also that every person wishing to make such commutation should furnish a spade, shovel, axe or hoe and if he were the owner of a "team, plow, wagon, cart, or other implement useful for working the high-

[4] *Laws of Wis. Terr.* 1837, No. 57, Sec. 35; *Revised Statutes*, 1839, 62, sec. 13; *Laws of Wis. Terr.* 1837, No. 84, sec. 12.

[5] *Laws of Wis. Terr.* 1837, No. 57, Sec. 36.

[6] *Short vs. The State, 80 Md.* 392.

[7] *Sawyer vs. Alton, 3 Scam.* 127.

[8] *York vs. Chicago Band Q. R. R. Co., 56 Neb.* 572; The court cited *Magneau vs. French, 30 Neb.* 843, also *Templeton vs. Tekamah, 32 Neb.* 542; the three cases above are cited in Cooley (third Ed.) 105.

ways'' he might be compelled to furnish such implement if his taxes amounted to at least $3. Persons commuting their highway taxes into labor were allowed 75 cents for every eight hours' work and 75 for every plow, wagon, yoke of oxen, team of horses, etc., furnished.[9]

In the first message of the first Governor of the state some very pointed observations in relation to highway taxes were made. In some districts the poll tax was paid into the town or county treasury and never paid out for road improvements, whereas it was the manifest intention of the poll tax law to further the building and maintaining of good roads. Resident tax payers too frequently performed their labor on the highways superficially so that in these cases also the aim of the per capita tax in a large measure failed of attainment. For still another reason the law failed to attain its end. As the rate of taxation was the same in towns and counties, in some districts where only a small amount of road labor was required a surplus arose; in others in which a large amount of labor was necessary to the keeping of the roads in a passable condition, because of the small amount of taxable property and the sparsity of population, there were deficits. Governor Dewey declared that the people of the state as a whole were interested in good roads and that it was unjust that small districts should be burdened with oppressive road taxes when adjoining districts enjoyed the same benefits without making equally great expenditures. ''Where there are equal benefits, there should be equal contributions.'' It was recommended that all highway taxes be paid in money and that they be expended in the opening and improving of highways under the direction of a road superintendent to be appointed in each county or town.[10]

The legislature, however, made no change but in 1856 the poll tax was increased to $1. Since 1899 the common councils of cities have had authority to levy a poll tax of $1.50 on the electors of cities.[11]

The law of 1872 providing for the incorporation of villages

[9] *Revised Statutes*, 1849, ch. 16, secs. 22, 31, 32, 33.
[10] *Governor's Message*, 1849, 7 and 8.
[11] *General Laws, 1856*, ch. 90; *Laws of 1899*, ch. 211.

declared that each village was to constitute a road district and was to levy the poll-tax, which is $1 on all males over 21, but no mention was made of commutation into labor. An amendment of 1881 added "and under 50 years" and provided that the tax might be paid in either money or labor. The village poll tax if unpaid is together with 50 per cent damages and the cost of the action to be recovered by suit by the treasurer, but another amendment of 1881 provided that the overseer of highways is to bring suit only in case he is unable to find goods and chattels the sale of which will yield a sum sufficient to satisfy the tax. Default of payment of judgment secured in such a suit works execution against the body of the defendent as in cases of tort. The proceeds of the village poll tax are to be used in improving streets, constructing and improving side walks and crosswalks and setting out shade and ornamental trees. If the poll taxes are insufficient for these purposes, special taxes may be levied with the consent of the people. The Boards of Trustees of villages are permitted to exempt members of fire companies or any poor person who is not able-bodied.[12]

Other provisions for exemption will be noted briefly. A law of 1870 exempted disabled soldiers of the civil war. In 1888 it was provided that persons who had served for ten years in the Watertown fire department were exempt as long as they continued to live in Watertown. At present, soldiers and marines of the civil war, members of the Wisconsin National Guard, honorably discharged members of the organization who have served for five years or been discharged because of injury received while on duty, members of fire companies, paupers, idiots, lunatics, and officers and employes of the state prison are exempt.

As was stated in the opening paragraph of this chapter the poll tax is now obsolete in many parts of the state. The Tax Commission of 1898 pointed out in its report that in 1897 more than one-half of the towns and villages and about two-thirds of the cities collected no poll taxes. There was no county in which all of the taxing districts levied the tax and in eight counties no poll tax at all was levied. Where attempts were made to

[12] *Laws of 1872*, ch. 188, secs. 52, 53; *Laws of 1881*, ch. 243, 251.

levy the tax only a small sum was realized. In 39 out of a total of 111 cities only $12,578 was realized. It is clear that public sentiment in Wisconsin is unfavorable to the poll tax, hence the commission recommended its abolition on the ground that laws that cannot be enforced and will not be obeyed have a tendency to weaken public conscience and destroy respect for all law.[13] The poll tax laws are still on the statute books, but in many parts of the state they are dead letters; it is certain that this tax is disappearing.[14]

[13] *Report of Tax Commission* 1898, 106.

[14] The poll tax, it is understood, was never a state tax in Wisconsin.

CHAPTER XIV

THE HAWKERS' AND PEDDLERS' TAX

The Hawkers' and Peddlers' Tax may be discussed under five heads; the principle of justification lying back of the tax, the question of its legality and constitutionality, the persons upon whom it is and has been levied, the rates at which levied, the penalties for evasion and its productivity and administration.

In Wisconsin as in other states the primary purpose of this tax has been to compel traders from other states to pay something toward the support of the state under whose protection they sell their wares and thus destroy an advantage that the non-resident trader might have, by reason of paying no taxes, over the resident trader. The earlier laws, however, were directed against the products of other states rather than against non-resident traders. They taxed not the non-resident trader but the products of other states. It has been held that it would be unjust if a non-resident should be permitted to do business in a state and pay neither a license tax on his business nor a tax on his property while the resident merchant pays both. It would be unjust for the non-resident trader, who enjoys all the advantages of the resident trader to escape all taxation to which the latter is subject.[1] It seems to the writer that the non-resident trader cannot be justly expected to pay a tax on his business if the resident trader does not, which is the case in Wisconsin. He pays as much in taxes as the resident trader. In Wisconsin he pays as much in consumption taxes. It is true that if a Michigan or an Illinois trader owns a horse and wagon he is not taxed on it in Wisconsin, but it is to be presumed that he is taxed on this property in his home state and it is hardly

[1] *31 Md.* 279.

fair to ask him to pay another tax in Wisconsin, nor has he any competitive advantage over the Wisconsin trader, unless of course the rate of taxation in his state is lower than in Wisconsin, but the difference would in most, if not in all cases, be unimportant in so far as the relative competing strength of the two traders as sellers is concerned. From the social point of view a tax directed without qualification against peddling can be easily justified under the police power of the state, for it is socially desirable to encourage fixed places of business and thus to protect citizens against the too frequent dishonesty of strange, itinerant traders. However, even if there could be doubt as to the non-justifiability of taxing non-resident traders it would be difficult to find justification for the early Wisconsin laws placing a tax on the peddling of products of other states. Such taxes were in sum and substance a kind of protective tax not to be justified under a system of free trade between the states.

Before passing on to a discussion of the law on the subject of hawkers' and peddlers' taxes it may be well to give a legal definition of the terms hawker and peddler. "Hawkers, peddlers, and petty chapman are persons traveling from town to town with goods and merchandise. The manner of traveling whether on foot or horseback, in wagons, carts, sleighs, or canal boats is immaterial. It is of no consequence whether the vehicle or conveyance is drawn by horses, mules, oxen, or steam propeller."[2]

The classic case in so far as peddlers' taxes are concerned is the well-known one of *Welton vs. Missouri* decided by the United States Supreme Court in 1875. The Missouri Supreme Court had held valid as a police regulation the law of that state requiring the payment of a license tax by all peddlers selling goods not the growth, produce or manufacture of the state of Missouri. This Missouri law was substantially the same as the Wisconsin law of 1852. The federal court in over-ruling the state court held that the law infringed upon the power of Congress to regulate commerce, which power includes the power of determining how far commerce shall be free and untram-

[2] *1 Harris*, 336.

meled.[3] Various state courts have decided in the same way.[4] The state of Maryland required traders resident in the state to pay license taxes varying from $12 to $150, according to the value of their stock, while non-resident traders were required to pay $300. In the case of *Ward vs. Maryland* the federal Supreme Court held that this law worked a violation of the privileges and immunities of citizens of other states. The Court said that if the states were allowed to levy discriminating taxes on the citizens of other states the power of Congress to regulate interstate commerce would soon become valueless.[5] In the case of *Walling vs. Michigan* the Supreme Court held that the Michigan tax on persons, not residing in the state nor having their chief place of business there, who are engaged in selling or soliciting the sale of liquors to be shipped into the state constitutes a regulation and a restraint on interstate commence, since it was necessarily discriminatory in favor of the products of the state.[6] In the case of *Robbins vs. the Shelby County Taxing District* the federal Supreme Court in 1886 decided that while a state may tax property within its jurisdiction,* whether in the original packages or not, it cannot tax the business of importing from other states, either by license or otherwise, because the right to bring goods from other states includes the right to sell or solicit sales. This was a commercial traveler case.[7]

The peddlers' tax has been passed upon three times by the Wisconsin Supreme Court. The amending law of 1870 provided that all resident peddlers selling goods not produced in the state and all non-resident peddlers be licensed. In the case of *Morrill vs. the State,* decided in 1875 but prior to the decision in *Welton vs. Missouri,* the Wisconsin Supreme Court upheld the law and the tax as an exercise of the police power of the state. The purpose of the law was defined as the encour-

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[3] Judson, *Taxation*, 142 or Thayer's *Select Cases.*

[4] Judson, Ibid. 141.

[5] *2 Wallace,* 419.

[6] *116 U. S.* 446. This and the preceding cases are cited in Judson, 140.

*In some cases State Courts have upheld taxes on hawkers and peddlers on the ground that a State has a right to tax all property within its jurisdiction.

[7] *120 U. S.* 489, cited by Judson, 146-147.

agement of fixed places of business, demanded by public policy, and the protection of the citizens of the state "from the arts and importunities and frequently dishonest practices" of a class of traders who are usually strangers and are not as directly amenable to the legal and social restraints which necessarily have a great influence upon the trader who has a fixed place of business. The learned Court did not attempt to show the relation between this policy of protection and the taxing of resident peddlers who sold goods produced in other states and the exemption of those selling Wisconsin products. We must infer from this decision that a peddler selling lightning rods manufactured in Illinois or wooden nut-megs made in Connecticut is more dangerous to the welfare of Wisconsin society than traders selling the same articles produced in Wisconsin. The law of 1870 the Court declared was not in restraint of interstate commerce because, while it restricted hawking and peddling, it did not interfere with the regular and usual course of trade. Under the law, the Singer Sewing Machine Company could not peddle its machines without a license, but it was not prevented from freely selling its machines at regular places of business.[8]

The next year in the case of *Van Buren vs. Downing*, the court held that in the light of *Welton vs. Missouri*, the Wisconsin law of 1870 was in conflict with the federal constitution. The court, however, upheld the law of 1876, which provided that only peddlers selling products not their own growth or make[9] should be taxed. Justice Dodge in handing down the opinion of the court in the case of the *State vs. Whitcom*, tried in 1904, very aptly characterized the peddlers' tax law as "an edifice of composite architecture, made up of a series of portholed turrets for offense against the obnoxious, and sheltered corridors to shield the favorites of the successive legislatures which have contributed to the conglomerate now under consideration." The classification of the law was pronounced inconsistent with both the theory of police power and the theory that the peddlers' exaction is a

[8] *38 Wis.* 428.
[9] *41 Wis.* 122.

tax, and also in violation of the guarantee of equal protection of the laws.[10]

Because of the mass of details in the legislation upon this subject the further history of the hawkers' and peddlers' tax in Wisconsin will be set forth under the three heads; the persons upon whom the tax has been levied, the rates of levy, and the penalties for evasion and the productivity and administration of the tax.

The only peddlers' tax authorized in the Territorial period was a high tax relating to the peddling of clocks. In 1837 the counties were directed to levy a tax of not less than $100 nor more than $300 on persons hawking wooden or brass clocks. This was clearly a police regulation. They were also to put a license tax of not less than $10 nor more than $50 on the selling of merchandise, which tax of course affected peddlers.[11]

The first state peddlers' license tax law enacted in 1852 provided for taxes upon persons traveling from place to place for the purpose of selling or exposing for sale goods, wares, or merchandise not the growth or manufacture of the citizens of Wisconsin. Licenses were issued for one year. The law was so modified in 1856 that peddlers of books, newspapers, pamphlets or maps not printed in the state were required to pay the license taxes. A law of 1867 provided that itinerant vendors of patent rights and of territory for the sale, use or manufacture of patent right articles or of patent rights, except in the case of inventions of the citizens of Wisconsin, should procure licenses just as other peddlers. This law provided also that licenses might be granted for a portion of the year, also that licenses might be transferred by the Secretary of State from one person to another, on account of change of business or for any other good reason. The next year the law was extended to apply to those soliciting trade by sample or otherwise, except merchants or others of the state selling goods of their own manufacture. This amendment exempted from the payment of local licenses those having state licenses. An amendment of 1870 exempted from the peddlers' tax disabled soldiers of the civil war. In

[10] *122 Wis.* 110.
[11] *Laws of Wis. Terr.* 1837, No. 68, sec. 1.

Iowa a peddlers' license tax law was held invalid because it exempted persons who had served in the army or navy. The 1901 Wisconsin law was declared to make an unreasonable classification because of a similar exemption.[12] Up to 1870 the tax was directed against goods from outside of the state. The law of 1870 provided that all resident peddlers selling goods not produced in the state and all non-resident peddlers be licensed. The law enacted six years later exempted all peddlers who sold either directly or through members of their families or through employes goods of their own make or growth. It made no difference whether such peddlers were residents or not, consequently the tax was imposed only on peddlers who sold products not of their own growth or manufacture. An amendment of 1878 exempted peddlers selling exclusively at wholesale, also train boys, fish peddlers, and all residents of the state incapacitated for ordinary business or labor, because of being blind, deaf and dumb, maimed or crippled. Another amendment three years later provided that a license must be obtained for bartering or exchanging as well as for selling. An act of 1882 declared that the license law was not to be construed as applying to any dealer in agricultural machinery or farm implements or to his employes, provided that he be a bona-fide resident of the state. An amendment of 1885 declared that the license law was not to apply to any butcher peddling his meat. Another amendment of 1889 classed transient merchants, traders, or dealers as peddlers and defined a permanent merchant, as distinguished from a transient merchant, as one who remains in a locality for six months or more or who pays taxes on his goods, wares, merchandise, or other articles of trade. The law of 1895 provided that manufacturers, mechanics, nurserymen, or farmers might sell without a license goods not of their own production provided that they had had the goods in their possession for three months prior to their sale. Two years later it was stipulated that the peddlers' license law is not to apply to the soliciting of orders for the sale, or to the offering for sale, by sample

[12] *Laws of 1852*, ch. 386; *Laws of 1856*, ch. 117; *Laws of 1867*, ch. 176, sec. 2; *Laws of 1868*, ch. 177; *Laws of 1870*, ch. 40; *State vs. Garbrouski, 111 Iowa*, 496 cited by Judson, 601.

or otherwise, of goods, wares, or merchandise, notions or other articles of trade that are outside of the state and are after their sale to be shipped direct to the persons ordering or purchasing the same. It was further declared that the law should not apply to any transaction that involves interstate commerce. In 1901, persons selling fruits or vegetables in cities of the first class were declared exempt. This exemption and the exemption of soldiers of the civil war, of butchers, of cripples, and of those who had had the goods peddled in their possession for three months prior to their sale were declared by the Supreme Court of the state in the 1904 case to constitute an unwarranted classification. The history of this tax is a history of the influence on legislation of private interests of various kinds. A law of 1905 imposes the taxes without exception on all hawkers and peddlers. Such a law can undoubtedly be sustained under the police power of the state.[13]

It will conduce to clearness to give the rates in tabular form.

1852 (*Laws of 1852*, Ch. 386.)

Peddler on foot	$10
With a single horse or other beast of burden	30
With a vehicle drawn by two horses or other animals	60

(Reduced to $50 by *R. S. 1853*, Ch. 50. sec. 3.)

1867 (*Laws of 1867*, Ch. 177, sec. 3.)

On foot	5
With single horse	15
With two horses	40
With more than two horses	50
Traveling by railroad, steamboat or other public conveyance	50
Traveling to solicit by samples, lists, catalogues or otherwise	25

1867 (sec. 4.) Specific taxes on peddlers of patent rights, etc. If he had an interest in or offered for sale more than half of the state, $20. If half the state or less, $10.

1870 (*Laws of 1870*, Ch. 72, sec. 3.)

On foot (including traveling on railroads or other public conveyance)	$15

[13] *Laws of 1876*, ch. 395, sec. 3; *Laws of 1878*, ch. 269; *Laws of 1881*, ch. 100; *Laws of 1882*, ch. 218; *Laws of 1885*, ch. 263; *Laws of 1889*, ch. 510; *Laws of 1895*, ch. 81; *Laws of 1897*, ch. 84; *Laws of 1901*, ch. 341; *Laws of 1905*, ch. 490.

With one animal carrying or drawing a burden..... $20
With a vehicle drawn by two animals 40
With a vehicle drawn by more than two animals 50

1889 (*Laws of 1889*, Ch. 510.)

On foot (including use of railroads or other public conveyance) $20
With one animal 30
With vehicle drawn by two or more animals 50
Transient merchants 15

Such merchants were to pay also a local license tax of not to exceed $5 a day.

1895 (*Laws of 1895*, Ch. 81.)

Rates were made $30, $45, $75; transient merchants $50 and a local license of not to exceed $20 a day. This $20 was changed to $50 later (*Laws of 1901*, Ch. 341.)* The rates now obtaining are those prescribed by the law of 1905, which imposes a license tax on all hawkers, peddlers, and transient merchants. (*Laws of 1905*, Ch. 490.)

Using a vehicle drawn by two or more animals or a conveyance propelled by mechanical power $75
Using a vehicle drawn by one animal 45
Using a hand cart or its equivalent 30
Using no vehicle 20
Transient merchants are obliged to pay a tax of 75
And are subject to a local license of not to exceed..... 25

(This applies especially to those who, having no fixed establishment, conduct fire or bankrupt sales.)

The administration of the hawkers' and peddlers' tax law has not, especially in the earlier years of the state's history, been marked by eminent success. In the first place it was a mistake not to provide for licenses for a fraction of a year. Such a provision was not made until 1867, fifteen years after the adoption of the tax. The Secretary of State in this interval received many applications for licenses for shorter periods

*By a law of 1877 (ch. 296, Sec. 4) showmen exhibiting any wild animal or other object of curiosity are required to pay a license of $20 a year. By a law of 1903 (ch. 393) caravans and menageries are taxed $100 a year. Showmen exhibiting on fair grounds of associations receiving aid from the state are exempt. In such cases a bond is required.

than one year. Some peddlers did not confine their business to Wisconsin but merely passed through the state, spending only a few weeks or months within its boarders; others pursued the business of peddling only in the seasons when they could not engage in other work; some whose sole occupation was peddling were not able to advance the amount required for a full years' license. Such were some of the conditions bearing on the administration of this tax law, when in 1852 the Secretary of State declared that strict justice as well as financial expediency demanded that licenses be issued for as short a period as three months.[14] The legislature, however, took no action and the tax continued to be evaded. Some evaded it because it was easy to do so and there was no penalty for so doing; some because they could not pay it; others because it was or seemed unjust, and it was in many cases. The receipts from this tax were in the year ending September, 1865 only $180; for the next year, only $130. As the state was overrun with peddlers it was evident that only a very small proportion of them paid their taxes. A great many of these peddlers were non-residents. On the ground of justice to the resident merchant and to the hawker who paid his tax the legislature was urged to take measures looking to a better administration of the law. It was recommended that it be made the duty of every sheriff, constable, or city marshal to call upon every peddler whom he should meet to show his license and if the peddler failed to do so to take him before a justice of the peace.[15]

It may be observed at this point that in 1876 the law was extended so as to apply to persons buying and selling the products of farmers. Under this clause many farmers who on their way to market bought products from their neighbors were arrested and fined for peddling without a license. The protest of the Governor in 1877 and his recommendation that this part of the law be abolished led to that end the same year.[16]

The first penalty was provided for in 1867, a penalty of 10 per cent of the amount of the tax, if not paid when due. A

[14] *Secretary of State's Report*, 1852, 23.
[15] *Secretary of State's Report*, 1866, 38.
[16] *Laws of 1876*, ch. 395; *Laws of 1877*, ch. 296; *Governor's Message* 1877, 17.

CHAPTER XV

PUBLIC WORKS—THE MILWAUKEE AND ROCK RIVER CANAL

Wisconsin entered the Union not long after many of the older states had come to grief on the rock of internal improvements, and consequently its constitution forbids state expenditures for such works. The Milwaukee and Rock River Canal project, which in the Territorial period aroused a keen and wide-spread interest, is of historical importance chiefly because if this canal plan had been carried out the state of Wisconsin would have had the interesting experience of owning and operating a canal. The question of a canal between Rock River and Lake Michigan began to be agitated as early as 1836, the year of the organization of Wisconsin Territory. On January 5, 1838 Congress passed a bill authorizing the incorporation of the Milwaukee and Rock River Canal Company, and on June 18 of the same year Congress granted to the Territory of Wisconsin for the purpose of aiding in the construction of the canal the theretofore unappropriated odd numbered sections of public land on both sides of the canal route. The Act of June 18 provided that whenever the Territory should be admitted into the Union as a state the lands granted for the construction of the canal or such part of such lands as might not already have been sold and the proceeds applied to the work should vest in the state of Wisconsin to be used for the completion of the canal. Furthermore, the state of Wisconsin was to have as many shares of stock of the canal company as should be equivalent to the aggregate of all sums of money arising as net proceeds from the sale of the lands and applied to the construction of the canal, and the state was to be entitled to the same dividends as any other stockholder. In the event of the state's making no

other adequate provision for buying out the other stockholders, the dividends on the state's stock and all additional proceeds from the canal lands over and above what was expended on the work of construction were to constitute a fund, to be applied to the extinguishing of the claims of all other stockholders until the entire stock vested in the canal should have been acquired by the state.

The law of 1838 provided that the Territory might borrow, with the canal lands as security, such sums as it might deem expedient. This authority to borrow was given in order that the construction of the canal might be expedited and the sale of the lands deferred to a time when a better price might be obtained. If the canal was not begun within three years and finished within ten, the state of Wisconsin was to be responsible to the Federal Government for all moneys received for the lands granted in aid of the canal project.[1]

At the session of the Territorial legislature beginning November 26, 1838, a bill was introduced to authorize the Governor to borrow not more than $500,000 for not less than ten nor more than thirty years and at a rate not exceeding 6 per cent. The bonds to be issued were not to be sold below par and were to be secured by the proceeds of the sale of the canal lands and by as much of the canal as should belong to the Territory or the state. All surplus accruing to the canal fund from sales, interest, canal tolls, or water rents over and above the interest on the bonds was to be applied to the purchase of the bonds or to be invested in productive stocks until the bonds should become payable. This bill, which on the whole seems to have been a wise one, except perhaps that the rate of interest provided for was too low, failed to become a law.[2] The next year, however, on February 26, the Governor was authorized to borrow $50,000. The conditions and stipulations were as in the bill of 1838.[3] The stringency in the money market at that time prevented the sale of the bonds, hence in 1841 a law was enacted authorizing the Governor to borrow not exceeding $100,000 at 7 per cent. Gov-

[1] Smith, William R., *History of Wisconsin*, Part II, 357, 361.
[2] Smith, supra, 364.
[3] Smith, 369.

ernor Dodge appointed Byron Kilbourne, with power of attorney, agent of the Territory for the negotiation of the loan.

On September 1, however, the new Governor, James D. Doty, revoked the authority given to Mr. Kilbourne, basing his action on the ground that Mr. Kilbourne's appointment was without authority and that the canal was impracticable. A committee of the legislature, which reported February 3, 1842, sustained the Governor in the matter. It was the opinion of the committee that the laws pertaining to the canal vested no power in the Governor to appoint an agent to negotiate the loan authorized in 1841.[4]

In the meantime Mr. Tweedy, the canal land receiver, had refused to accept in payment for bonds $30,000 worth of certificates of the Ohio Life Insurance and Trust Company. The receiver held that the bonds were to be sold for specie. The law read money. It was found impossible to sell the bonds for specie, as they were not to be sold below par and specie bore a premium of 5 per cent.

Soon after the legislative report referred to above was made, the legislature enacted two laws repudiating the canal trust. The first law remitted absolutely all interest due the Territory on account of the canal lands prior to December 22, 1841 and all interest due after that date, except so much as should be required to meet the interest on any loan that had been made for the promoting of the canal and also so much as should be necessary to defraying the costs of collecting interest.[5] There is no little doubt as to the legality of these remissions, as the canal lands had been given for the express purpose of aiding in the construction of the canal. The second law revoked all authority to negotiate a canal loan, took away the authority of the acting canal commissioner to pass upon contracts for materials and labor and the authority of the register and receiver to pay for labor and materials. The power of the commissioners to apply the canal funds to the construction of the canal was revoked also.[6]

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[4] Smith, 390, 407.
[5] Smith, 409.
[6] Smith, 410.

[redacted]

[redacted] appropriating the proceeds of the sale of the public lands and to grant preemption rights," approved September 4, 1841. Congress added the proviso, however, that the liabilities incurred by the Territorial government in connection with the canal [redacted] should be paid and discharged by the state.[7]

[redacted]

7 Smith, 444

Not only did the Territory repudiate ten of its canal bonds, but it misappropriated over $100,000 of the canal fund. Of this sum $80,000 was used for the two constitutional conventions.[8] The National Government has claimed that the state's indebtedness to the canal fund is $101,262.33, which sum has been withheld from the five per cent of the net proceeds of the sale of United States lands within Wisconsin, which five per cent it will be recalled goes into the school fund of the state.

The opposition to the Milwaukee and Rock River Canal came chiefly from those who were interested in the proposed Fox and Wisconsin River Canal. The Fox and Wisconsin people could not hope for appropriations for their canal so long as the Milwaukee and Rock River project gave promise of being a successful venture and therefore they opposed the Rock River Canal, which the Wisconsin historian, William R. Smith, thought would have been completed in four or five years if the $500,000 loan bill had become a law.[9] It is quite probable, however, that much of this half million dollars would have been wasted and the canal project would have become a source of corruption and graft.

[8] Smith, 442.
[9] Smith, 368, 369.

CHAPTER XVI

RECEIPTS AND EXPENDITURES CLASSIFIED. STATISTICS OF POPULATION AND RESOURCES

I. Receipts

1. State taxes received from the counties and state taxes received from corporations.

The purpose of this table is to show the amounts received from the counties each year in the form of taxes and more especially to show the growth of the corporation tax, both absolutely and relatively. It is to be noted that in the earlier years of the state's history the amounts of taxes received from the counties were always less than the amounts due.[1]

Year.	Received from the counties.	Received from the corporations.
1849	$52,834 96	$11 00
1850	93,682 36	41 00
1851	79,341 00	86 00
1852	82,208 72	.....
1853	93,621 51	3,753 42*
1854	168,477 93	18,154 38*
1855	227,223 15	31,605 44
1856	342,275 67	42,608 92
1857	289,098 55	48,487 87
(Report for this year was for nine months only, as the financial year was changed so that it extended from Oct. 1, to Sept. 30.)		
1858	259,965 91	110,552 05
1859	420,878 44	132,898 73
1860	245,189 77	140,309 18
1861	259,771 50	132,715 09
1862	326,827 94	178,413 02
1863	605,025 75	178,441 25
1864	387,164 49	204,900 13
1865	780,755 07	249,345 45
1866	880,033 42	261,386 41
1867	349,238 04	296,842 46

[1] From 1857 to 1901 inclusive the financial year ended Sept. 30. Since 1902 it has ended June 30, and therefore figures for 1902 include only nine months.

* Nearly all these amounts were from taxes on banks.

Year.	Received from the counties.	Received from the corporations.
1868	662,697 55	299,972 14
1869	543,478 16	316,314 52
1870	528,902 74	336,570 50
1871	698,037 96	295,793 93
1872	685,040 93	335,570 33
1873	781,875 60	277,464 60
1874	733,145 90	464,243 62
1875	592,069 75	506,735 35
1876	657,067 55	457,385 91
1877	725,899 15	430,367 14
1878	648,153 90	424,035 37
1879	777,183 65	444,375 02
1880	563,088 52	462,311 00
1881	775,148 01	531,790 50
1882	573,935 67	641,574 26
1883	812,256 37	744,918 08
1884	433,403 24	825,082 93
1885	338,177 35	808,361 78
1886	893,304 01	831,459 26
1887	902,315 87	846,316 82
1888	996,504 41	1,155,747 83
1889	1,206,923 65	1,036,453 82
1890	1,669,184 83	1,103,633 26
1891	871,571 16	1,242,930 20
1892	836,829 85	1,337,851 23
1893	1,015,231 80	1,297,024 28
1894	1,030,815 90	1,583,111 31
1895	959,531 70	1,321,640 26
1896	1,070,235 26	1,323,472 11
1897	1,260,138 83	1,410,645 41
1898	1,142,277 70	1,418,297 54
1899	1,526,286 73	1,710,388 60
1900	1,389,312 30	2,004,527 58
1901	1,401,892 58	2,064,119 19
1902	2,290,532 89	1,234,989 93[2]
1903	2,300,235 43	2,523,501 20
1904	1,239,248 91	2,506,540 25
1905	1,362,558 37	2,567,990 27
1906	1,450,439 54	4,050,495 85

2. Taxes from different kinds of corporations.

a. From Railroads.

1855	$5,013 11	1873	$210,374 99	1891	$1,140,046 64
1856	9,173 62	1874	393,235 40	1892	1,220,674 88
1857	14,203 56	1875	436,414 46	1893	1,156,260 75
1858	19,388 80	1876	395,952 64	1894	1,438,758 66
1859	12,923 72	1877	380,726 26	1895	1,175,752 52
1860	23,555 96	1878	379,474 69	1896	1,172,793 63
1861	25,056 29	1879	395,886 46	1897	1,265,094 54
1862	99,483 01	1880	418,148 76	1898	1,247,357 08
1863	107,561 10	1881	483,975 42	1899	1,360,120 14
1864	128,003 97	1882	586,328 58	1900	1,547,141 64
1865	176,957 65	1883	683,082 51	1901	1,600,379 79
1866	203,296 10	1884	754,269 44	1902	857,854 55
1867	234,480 71	1885	733,195 57	1903	1,795,285 60
1868	225,784 51	1886	747,870 99	1904	1,913,396 28
1869	235,551 43	1887	768,994 56	1905	1,955,894 56
1870	247,296 72	1888	1,068,632 96	1906	3,410,804 35
1871	241,130 58	1889	947,772 04		
1872	228,528 49	1890	1,008,559 04		

[2] Railroad tax fell off one-half in this year, which was a panic year.

b. From Plank and Gravel Road Companies and from Bridge Companies. There were no receipts from Gravel Road Companies until 1871, and none from Bridge Companies until 1899.

1855	$273 24	1873	247 68	1891	.....
1856	503 30	1874	273 79	1892	.....
1857	253 02	1875	173 84	1893	.....
1858	614 71	1876	164 96	1894	.....
1859	310 38	1877	161 42	1895	.....
1860	191 58	1878	148 07	1896	.....
1861	113 12	1879	96 80	1897	613 70
1862	109 85	1880	138 38	1898	683 59
1863	128 21	1881	104 57	1899	606 00
1864	96 23	1882	107 16	1900	524 85
1865	116 49	1883	112 28	1901	352 99
1866	88 92	1884	32 47	1902	33 38
1867	66 95	1885	34 31	1903	275 21
1868	119 47	1886	33 44	1904	289 87
1869	105 11	1887	33 12	1905	306 61
1870	193 29	1888	32 05	1906	1,001 15
1871	317 72	1889	.....		
1872	200 35	1890	.....		

c. From Banks.

1853	$3,535 42	1861	93,072 12	1869	2,400 00
1854	18,121 88	1862	63,590 70	1870	.....
1855	26,319 09	1863	52,208 49	1871	.....
1856	32,952 00	1864	52,016 56	1872	45,177 87
1857	33,969 79	1865	40,658 72	1873	.....
1858	90,412 79	1866	23,271 94	1874	1,500 00
1859	118,806 85	1867	4,582 50		
1860	106,155 43	1868	778 78		

d. From Loan and Trust Companies.

1891	$668 14	1897	2,272 80	1903	2,426 52
1892	748 82	1898	2,604 10	1904	3,090 43
1893	1,025 85	1899	2,317 01	1905	4,247 37
1894	1,902 84	1900	2,261 50	1906	7,963 51
1895	2,598 33	1901	2,487 89		
1896	2,271 68	1902	2,357 43		

e. From Boom Companies.

1892	3,095 13	1897	1,329 63	1902	779 45
1893	4,187 66	1898	1,769 72	1903	558 71
1894	1,579 11	1899	1,886 10	1904	396 01
1895	1,176 92	1900	1,292 72	1905	316 12
1896	2,379 17	1901	1,578 50	1906	346 29

f. From Telegraph Companies, Telephone Companies, Express Companies, Street Railway and Electric Lighting Companies, Sleeping Car, Freight Line and Equipment Companies.

1. From Telegraph Companies.

1849	$11 00	1869	948 00	1889	7,350 73
1850	41 00	1870	130 20	1890	7,775 77
1851	86 00	1871	1,094 70	1891	8,691 16
1852	.....	1872	205 00	1892	9,225 53
1853	118 00	1873	3,522 00	1893	9,657 69
1854	22 50	1874	2,346 00	1894	9,935 71
1855	.....	1875	2,288 00	1895	9,999 45
1856	40 00	1876	2,288 00	1896	10,817 56
1857	61 50	1877	2,366 00	1897	10,684 38
1858	106 75	1878	2,519 00	1898	10,892 15
1859	133 00	1879	2,619 00	1899	11,199 60
1860	147 00	1880	2,679 00	1900	11,312 15
1861	183 00	1881	3,013 00	1901	11,507 35
1862	193 10	1882	3,417 00	1902	11,721 80
1863	193 10	1883	3,897 87	1903	11,481 20
1864	204 35	1884	4,568 85	1904	13,067 46
1865	193 10	1885	5,451 28	1905	13,288 94
1866	.....	1886	5,618 53	1906	13,473 54
1867	528 25	1887	5,925 63		
1868	551 75	1888	5,807 03		

2. From Telephone Companies.

1883	$463 29	1891	5,076 43	1899	17,314 74
1884	1,169 26	1892	5,520 43	1900	21,426 73
1885	1,585 98	1893	11,705 71	1901	25,224 33
1886	3,324 63	1894	9,716 29	1902	31,770 45
1887	3,459 31	1895	9,838 99	1903	37,414 24
1888	4,111 52	1896	9,744 64	1904	44,398 22
1889	4,442 38	1897	10,777 14	1905	53,475 10
1890	4,691 48	1898	15,477 59	1906	27,962 12

3. From Express Companies.

1900	$7,247 01	1903	4,765 00	1906	9,738 96
1901	14,084 54	1904	8,865 12		
1902	.....	1905	8,383 76		

4. From Street Railway and Electric Lighting Companies.

1896	$746 73	1900	8,322 06	1904	12,671 35
1897	697 17	1901	9,274 07	1905	13,601 47
1898	4,131 90	1902	9,977 64	1906	17,890 01
1899	4,915 82	1903	12,000 64		

5. From Sleeping and Palace Car Companies.

1884	$138 15	1892	1,214 96	1900	16,900 31
1885	376 17	1893	1,193 04	1901	9,145 88
1886	1,039 31	1894	1,223 39	1902	.....
1887	511 36	1895	503 80	1903	6,346 05
1888	1,197 74	1896	2 031 14	1904	3,581 60
1889	1,228 80	1897	904 95	1905	3,555 79
1890	1,365 67	1898	852 69	1906	4,174 85
1891	894 32	1899	949 40		

6. Freight Line and Equipment Companies.

1900	$1,150 99	1903	1,990 68	1906	2,772 45
1901	973 40	1904	1,997 66		
1902	1,222 80	1905	1,990 26		

g. From Insurance Companies.

1859	$724 78	1875	67,859 05	1891	96,244 67
1860	10,759 21	1876	58,880 31	1892	106,597 00
1861	14,290 56	1877	47,113 46	1893	122,651 27
1862	15,136 38	1878	41,893 61	1894	129,931 05
1863	18,350 35	1879	45,772 76	1895	131,574 60
1864	24,579 02	1880	41,345 15	1896	133,505 13
1865	31,419 49	1881	44,697 51	1897	128,955 68
1866	34,729 45	1882	51,722 53	1898	145,420 72
1867	52,184 05	1883	57,361 13	1899	312,079 79
1868	65,737 63	1884	64,804 75	1900	336,947 62
1869	77,309 98	1885	67,718 47	1901	334,139 46
1870	88,950 31	1886	73,572 36	1902	319,222 15
1871	53,250 93	1887	72,892 84	1903	450,807 35
1872	61,458 62	1888	75,966 53	1904	506,787 25
1873	63,299 93	1889	83,010 60	1905	513,237 90
1874	66,888 43	1890	89,017 07	1906	555,269 77

h. Taxes for Education.*

1. The one mill tax for common schools.

1886	$488,139 61	1893	653,057 00	1900	625,000 00
1887	496,507 15	1894	654,943 00	1901	630,018 02
1888	581,264 75	1895	600,000 00	1902	1,436,284 00
1889	573,229 85	1896	603,473 00	1903	1,502,425 55
1890	577,092 82	1897	599,429 38	1904	1,029,332 50
1891	592,890 72	1898	600,570 62	1905	1,089,855 53
1892	623,859 42	1899	600,000 00	1906	1,167,035 72

*For other education taxes, see the chapter on State Taxes for Education.

2. Taxes for the University.

1878	$42,359 62	1888	72,658 09	1897	255,000 00
1879	41,310 30	1889	71,653 73	1898	255,000 00
1880	43,897 18	1889	200,000 00	1899	255,000 00
1881	44,558 27	1890	72,136 60	1900	268,000 00
1882	44,785 00	1891	74,111 34	1901	268,000 00
1883	45,632 51	1893	141,372 37	1902	289,000 00
1884	57,442 52	1893	146,937 82	1903	280,000 00
1885	59,549 54	1894	147,362 18	1904*	
1886	61,017 45	1895	135,000 00	1905	
1887	62,063 39	1896	256,476 00	1906†	

i. The Suit Tax, a tax of $1.00 on each and every civil action begun in a circuit court of the state. The purpose of this tax is to aid in paying the salaries of the judges. Clerks of courts have never accounted for anything like all of these taxes collected by them.

1848-1849-1850	$3,090 00	1869	2,943 79	1888	5,286 00
1851	1,138 00	1870	4,248 46	1889	5,884 00
1852	2,124 00	1871	4,026 32	1890	5,755 00
1853	1,414 00	1872	3,460 00	1891	5,443 00
1854	1,363 00	1873	3,805 00	1892	6,700 00
1855	1,715 00	1874	3,856 89	1893	6,559 00
1856	4,087 50	1875	3,532 97	1894	7,903 00
1857	3,615 50	1876	5,577 12	1895	7,728 00
1858	7,403 00	1877	4,520 03	1896	7,406 00
1859	8,080 00	1878	5,786 63	1897	7,183 00
1860	6,526 59	1879	6,210 11	1898	7,023 00
1861	5,791 93	1880	6,075 32	1899	5,835 00
1862	3,443 66	1881	4,724 00	1900	5,130 00
1863	2,564 47	1882	6,211 11	1901	5,643 00
1864	2,265 18	1883	5,060 00	1902	5,871 00
1865	2,641 77	1884	4,504 00	1903	5,230 00
1866	2,928 88	1885	4,708 00	1904	5,009 00
1867	2,898 84	1886	5,449 00	1905	5,515 00
1868	2,611 62	1887	5,323 00	1906	6,229 00

j. The Hawkers' and Peddlers' Tax. In later years—after 1872,—includes taxes on showman.

1852	1,440 00	1867	3,090 92	1882	14,080 36
1853	850 00	1868	9,710 57	1883	13,218 98
1854	726 08	1869	3,793 32	1884	13,005 85
1855	800 00	1870	3,049 52	1885	15,041 45
1856	650 00	1871	2,635 62	1886	15,867 70
1857	290 00	1872	7,964 82	1887	13,423 15
1858	90 00	1873	7,188 29	1888	13,606 95
1859	180 00	1874	12,064 74	1889	16,755 50
1860	270 00	1875	13,061 76	1890	15,084 25
1861	390 00	1876	11,143 24	1891	17,196 17
1862	540 00	1877	11,748 38	1892	14,267 18
1863	290 00	1878	9,351 84	1893	15,228 17
1864	240 00	1879	6,818 72	1894	12,841 95
1865	130 00	1880	8,087 43	1895	19,063 69
1866	130 00	1881	13,665 47	1896	15,994 58

* $345,000 transferred from general fund in 1905; no university tax in 1904.
† $557,914 transferred from general fund; no university tax levied in 1905.

k. Receipts from Fees, 1881–1906.

1881	$13,154 02	1890	31,335 55	1899	135,455 29
1882	20,530 77	1891	32,994 22	1900	96,594 55
1883	21,504 39	1892	33,448 07	1901	213,587 99*
1884	21,502 86	1893	39,828 36	1902	156,064 42*
1885	19,403 39	1894	30,980 07	1903	224,421 11*
1886	23,650 09	1895	40,565 42	1904	271,301 74*
1887	26,197 22	1896	44,956 90	1905	128,450 39
1888	26,146 10	1897	55,774 97	1906	192,788 45
1889	27,775 73	1898	124,513 88		

l. Receipts from Prisons and Charitable Institutions, 1895–1906.

1895	$34,486 38	1899	88,887 05	1903	101,964 80
1896	80,120 43	1900	83,812 76	1904	112,333 04
1897	79,916 32	1901	85,824 40	1905	134,248 29
1898	92,702 44	1902	77,926 40	1906	145,719 31

II. Expenditures

1. Total Expenditures from Funds raised by taxation. Includes all expenditures except those paid from the Trust Fund Incomes.

1849	$78,085 73	1865	1,491,536 20[5]	1881	1,195,351 68
1850	62,746 20	1866	1,157,499 97[6]	1882	1,186,807 54
1851	101,885 98	1867	826,533 82	1883-84	2,332,857 57
1852	136,096 23	1868	946,518 65	1885-86	3,416,415 38
1853	160,407 14	1869	919,372 33	1887-88	4,271,186 78
1854	222,154 12	1870	906,329 58	1889-90	4,476,894 18
1855	253,059 52[3]	1871	965,377 42	1891-2	2,980,614 32
1856	107,649 50[3]	1872	1,076,442 96	1893-94	3,498,391 49
1857	198,633 23[4]	1873	1,191,966 01	1895-96	4,840,877 24
1858	461,401 33	1874	1,038,703 34	1897-98	5,144,485 43
1859	520,223 52	1875	1,260,168 39	1899-1900	5,219,297 75
1860	370,573 94	1876	1,137,788 65	1901-02	5,153,716 88
1861	377,684 21	1877	1,204,900 40	1903-04	6,779,235 32
1862	505,386 99	1878	1,047,796 23	1905-06	8,695,994 73
1863	810,940 55[5]	1879	1,055,112.51		
1864	769,846 74[6]	1880	1,179,815 52		

2. Expenditures for General Administration and Supervisions, including the salaries of state officers, commissioners, etc.,

* Includes sundry sources. Fees of but slight consequence before 1881.

[3] Estimated.

[4] For nine months.

[5] $272,156.16 for the war fund.

[6] $200,000 for war fund.

[7] $200,000 for war tax, $783,800 for redemption of bonds and loans.

[8] $378,076.03 for certificates of indebtedness. $197,444.92 for interest.

and the expenses of their departments and offices. The expenses of the state courts are not included.

1849	$5,950 00	1865	48,214 26	1881	109,301 00
1850	4,892 33	1866	45,242 06	1882	121,684 13
1851	5,875 00	1867	57,026 78	1883-84	228,398 64
1852	15,050 00	1868	64,112 10	1885-86	267,264 15
1853	25,750 00	1869	64,248 44	1887-88	290,056 60
1854	16,350 00	1870	69,400 49	1889-90	319,643 25
1855	13,150 00	1871	75,954 13	1891-92	354,674 33
1856	13,150 00	1872	72,045 55	1893-94	338,552 43
1857	24,750 00	1873	70,187 35	1895-96	380,832 24
1858	29,350 00	1874	61,366 77	1897-98	662,583 45
1859	26,900 00	1875	63,787 77	1899-1900	975,926 63
1860	36,311 98	1876	68,842 38	1901-02	872,948 70
1861	28,662 30	1877	70,964 36	1903-04	1,016,516 28
1862	30,380 97	1878	108,998 31	1905-06	1,158,051 35
1863	46,609 18	1879	107,547 23		
1864	48,878 28	1880	106,111 43		

3. Legislative Expenses. Compensation of members, officers, clerks; mileage, postage, printing.

1849	$20,175 00*	1865	61,000 00*	1881	101,210 96
1850	14,309 58	1866	82,420 15	1882	103,217 68
1851	36,215 52	1867	86,201 86	1883-4	124,222 28
1852	45,406 88	1868	81,423 76	1885-6	145,834 60
1853	59,549 90	1869	91,742 60	1887-8	157,496 36
1854	40,000 00*	1870	95,838 94	1889-90	170,168 10
1855	27,025 00*	1871	101,666 12	1891-2	157,181 49
1856	29,462 50	1872	112,326 80	1893-4	155,209 16
1857	39,000 00*	1873	103,730 22	1895-6	167,828 74[9]
1858	29,300 00*	1874	88,010 51	1897-8	208,413 21
1859	52,150 00*	1875	86,645 50	1899-1900	206,853 39
1860	80,494 12	1876	95,835 43	1901-2	222,107 56
1861	74,008 97	1877	90,579 01	1903-4	200,147 13
1862	81,086 72	1878	107,605 45	1905-6	240,382 00†
1863	65,192 39	1879	84,301 61		
1864	56,000 00*	1880	91,517 75		

It is very evident that the biennial session instead of the annual session has resulted in a saving.

4. Expenditures for the State Courts.

1849-50	$14,500 00	1869-70	81,771 80	1889-90	176,366 83
1851-2	18,000 00	1871-2	87,007 67	1891-2	194,822 77
1853-4	19,500 00	1873-4	90,168 03	1893-4	204,814 45
1855-6	40,500 00	1875-6	100,076 74	1895-6	207,562 56
1857-8	45,000 00	1877-8	114,898 94	1897-8	226,382 18
1859-60	56,875 00	1879-80	132,431 83	1899-1900	233,305 63
1861-2	61,638 23	1881-2	135,504 24	1901-2	213,384 85
1863-4	67,164 88	1883-4	141,429 54	1903-4	250,914 67
1865-6	72,781 99	1885-6	146,752 25	1905-6	287,935 33
1867-8	78,767 30	1887-8	156,207 03		

* Estimated.

† Special session included.

[9] Expense of publishing laws not included prior to 1897-8. In 1895-6 such expense was $45,283.65; in 1897-8, $51,700.00.

5. State Prison. The Insane, Blind, Deaf and Dumb in State Institutions.

1849-50	$5,319 27	1869-70	650,219 87	1889-90	788,109 43
1851-2	8,364 72	1871-2	845,299 04	1891-2	755,040 65
1853-4	33,356 02	1873-4	902,242 41	1893-4	762,094 70
1855-6	.....	1875-6	908,583 44	1895-6	1,108,971 64
1857-8	250,000 00	1877-8	842,978 05	1897-8	1,586,725 66
1859-60	244,293 58	1879-80	797,830 24	1899-1900	1,397,207 88
1861-2	241,173 65	1881-2	802,061 00	1901-2	1,455,224 32
1863-4	151,750 25	1883-4	654,283 50	1903-4	1,586,404 78
1865-6	379,407 90	1885-6	663,715 82	1905-6	1,911,134 32
1867-8	667,357 23	1887-8	810,113 97		

6. Miscellaneous and Contingent Expenses.

1849-50	$31,226 72	1869-70	385,679 26	1889-90	1,234,804 14
1851-2	43,333 02	1871-2	503,095 05	1891-2	1,406,006 41
1853-4	56,659 56	1873-4	644,145 96	1893-4	1,888,529 00
1855	36,500 00	1875-6	694,167 36	1895-6	2,778,692 92
1857-8	195,174 25	1877-8	621,524 74	1897-8	.....
1859-60	.....	1879-80	460,577 11	1899-1900	1,816,303 97
1861	98,315 05	1881-2	553,212 84	1901-2	1,570,700 46
1863-4	.....	1883-4	697,355 77	1903-4	2,779,999 22
1865-6	165,700 00	1885-6	1,182,430 95	1905-6	.....
1867-8	352,007 51	1887-8	1,167,381 33		

III. The Trust Fund Incomes

1. The School Fund Income.*

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1849-50	$24,113 38	.....	1879-80	$381,856 88	$374,635 96
1851-52	87,529 66	.....	1881-82	390,517 37	388,059 48
1853-54	174,236 72	.....	1883-84	398,973 62	413,701 81
1855-56	279,056 88	148,882 59	1885-86	885,490 52	877,708 82
1857-58	398,835 61	375,770 23	1887-88	1,467,444 22	1,455,546 99
1859-60	348,968 08	353,839 68	1889-90	1,544,709 72	1,555,151 60
1861-62	338,850 41	341,573 87	1891-92	1,649,858 60	1,640,618 81
1863-64	303,348 47	322,581 47	1893-94	1,715,229 27	1,708,889 49
1865-66	345,401 12	353,647 16	1895-96	1,637,991 33	1,629,259 99
1867-68	343,225 92	345,814 58	1897-98	1,590,913 07	1,475,251 97
1869-70	349,607 96	341,986 05	1899-1900	1,595,113 81	1,579,648 57
1871-72	349,392 71	337,240 26	1901-02	2,448,600 53	2,462,883 94
1873-74	368,526 64	371,541 03	1903-04	3,190,723 48	3,085,560 91
1875-76	379,148 79	385,560 27	1905-06	3,060,430 48	3,056,203 17
1877-78	374,921 57	380,187 07	.....	.....	.....

* Receipts from taxes are included.

2. The University Fund Income.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1850 ..	$441 67	.....	1879-80	$131,450 00	$131,498 27
1852 ..	416 04	.....	1881-82	136,600 18	136,567 53
1853-54	13,574 11	$13,895 21	1883-84	152,058 00	152,058 00
1855-56	28,347 01	28,347 91	1885-86	214,020 81	214,020 81
1857-58	40,889 52	41,841 60	1887-88	212,488 91	212,488 91
1859-60	39,776 27	39,496 06	1889-90	276,887 51	276,887 51
1861-62	36,534 24	30,167 72	1891-92	431,288 53	431,288 53
1863-64	24,566 35	25,923 24	1893-94	709,399 29	709,399 29
1865-66	29,559 96	25,232 21	1895-96	652,061 44	652,061 44
1867-68	45,996 62	49,350 66	1897-98	798,167 12	798,167 12
1869-70	59,949 55	62,097 98	1899-1900	994,947 58	994,947 58
1871-72	70,241 29	69,812 67	1901-02	715,380 83	715,380 83
1873-74	85,847 69	85,206 56	1903-04	1,239,900 24	1,237,451 23
1875-76	83,474 62	83,409 77	1905-06	2,237,514 11	2,213,059 62
1877-78	134,758 25	134,653 05	.....	.....	.....

3. The Agricultural College Fund Income.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1866 ..	$145 77	.....	1887-88	$32,730 32	$32,730 32
1867-68	4,221 50	$43 38	1889-90	28,998 46	28,998 46
1869-70	15,028 78	17,863 76	1891-92	34,205 38	34,205 38
1871-72	26,051 69	26,025 56	1893-94	45,219 06	45,219 06
1873-74	31,313 52	31,166 40	1895-96	52,784 15	52,784 15
1875-76	29,820 88	29,638 78	1897-98	60,375 18	60,075 18
1877-78	36,564 27	36,406 90	1899-1900	27,951 88	27,951 88
1879-80	31,672 27	31,151 39	1901-02	35,619 17	35,619 17
1881-82	33,879 18	33,621 19	1903-04	26,167 78	26,167 78
1883-84	34,947 54	34,947 54	1905-06	26,487 29	38,750 04
1885-86	32,990 91	32,990 91	.....	.....	.....

4. The Normal School Fund Income.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1866 ..	$69,430 94	$22,761 03	1887-88	$214,888 22	$214,310 65
1867-68	86,711 59	121,859 29	1889-90	215,326 41	215,326 41
1869-70	104,634 41	108,538 82	1891-92	292,705 38	292,705 38
1871-72	113,372 59	92,291 81	1893-94	473,911 17	473,911 17
1873-74	151,554 00	116,497 32	1895-96	387,703 59	387,703 59
1875-76	157,394 92	208,668 89	1897-98	599,778 03	599,778 03
1877-78	168,440 95	190,892 53	1899-1900	625,269 51	625,269 51
1879-80	163,544 98	163,470 07	1901-02	638,898 59	638,898 59
1883-84	176,223 96	176,223 96	1903-04	668,996 42	509,588 29
1885-86	200,174 44	200,752 01	1905-06	565,458 37	657,573 42

IV. The Swamp Land Fund, the Swamp Land Fund Income, and the Drainage Fund.

1. The Swamp Land Fund.

Year.	Receipts.	Disbursements.
1856	$53,622 52	$714 20
1857	323,542 98	14,188 36
1858	51,370 81	.....
1859	14,468 61	22,114 60
1860	23,177 18	27,406 42
1861	27,242 49	21,278 21
1862	14,755 73	8,928 90
1863	31,929 98	6,177 40
1864	42,259 01	71,022 12
1865	91,411 40	95,391 13
1866	4,613 56	1,955 26

2. The Swamp Land Fund Income.

Year.	Receipts.	Disbursements.
1856	$1 25	.....
1857	22,763 10	.....
1858	66,203 13	.....
1859	56,761 27	.....
1860	35,508 92	.....
1861	22,547 54	$29,311 84
1862	16,157 33	17,357 49
1863	13,544 35	14,850 68
1864	16,383 88	16,961 13
1865	19,463 20	21,964 07
1866	114 90	342 41

3. The Drainage Fund.

Amount of the Fund in 1867 was $36,998.62.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1868	$78,826 14	$69,095 90	1887-88	$137,579 40	$153,832 85
1869-70	84,073 26	94,459 32	1889-90	95,280 73	121,982 50
1871-72	269,337 85	232,371 75	1891-92	149,492 22	171,835 96
1873-74	135,954 70	175,793 90	1893-94	51,854 99	122,374 71
1875-76	44,889 66	52,772 30	1895-96	64,831 34	49,077 72
1877-78	31,827 88	31,559 14	1897-98	35,136 19	54,331 09
1879-80	32,337 61	32,275 18	1899-1900	22,741 91	33,012 41
1881-82	116,314 06	72,518 26	1901-1902	1,818 30	318 43
1883-84	131,575 46	131,418 41	1903-1904	7,239 40	1,815 74
1885-86	90,450 99	73,781 82	1905-1906	15,991 74	*25,607 25

* 7,000 was transferred to Normal fund.

V. The War Fund

Year.	Receipts.	Disbursements.
1861:		
Sale of bonds	$600,227 50	
40 per cent of claims against U. S.	205,000 00	$791,875 92
U. S.	3,531 06	
Loan from State Bank	10,000 00	
1862:		
Sale of bonds	472,608 19	
From U. S. on account of advance	229,115 83	648,490 08
Refunded by individuals	2,109 11	
1863:		
Miscellaneous	2,210 62	
Sale of bonds	310,395 00	776,789 76
Tax	272,156 16	
U. S.	147,163 83	
1864:		
Loans from the trust funds	385,000 00	
Sale of bonds	13,350 00	680,329 28
Tax	200,000 00	
Miscellaneous	2,913 56	
1865:		
Loans from the trust funds	623,000 00	
Loans from general fund	195,000 00	
U. S.	300,000 26	1,340,669 19
Tax	200,000 00	(Includes $198,716.75 paid into the general fund)
Sale of bonds	44,677 25	
Refunded	1,413 68	
1866:		
From the trust funds	135,000 00	
Sale of bonds	12,604 31	179,166 17
Refunded	319 67	
1867:		
Sale of bonds	3,154 90	
Miscellaneous	18 00	10,739 02
1868:		
Sale of bonds	1,685 00	
From general fund to close war fund	8,256 39	3,969 95

In 1902 and 1903 Civil War claims amounting to $460.436.20 were paid to the state.

VI. Spanish War

Expenditures for 1898, $159,241.31.

VII. Statistics of Population and Resources

1. Population.

1840.	1850.	1860.	1870.	1880.	1890.	1900.	1905.
30,945	305,391	775,881	1,054,670	1,315,497	1,686,880	2,062,916	2,228,949

2. Agricultural Statistics.

Year.	Value of farms.	Value of farm implements.	Value of farm property, including land with improvements, machinery and live stock.	Value of farm products.
1850	$28,528,563	$1,641,503	$35,067,516	.....
1860	121,117,164	5,758,847	154,688,386	.....
1870	300,414,004	11,391,491*	287,971,447[10]	$62,421,618[11]
1880	357,704,507	15,647,196	419,865,346	72,779,496
1890	477,524,507	19,167,010	560,475,894	70,990,645
1900	686,147,060	29,237,010	811,712,319	157,445,713
1905	.....	.....	.....	.....

3. Manufacturing Statistics.

Year.	Capital employed.	Value of manufactures.
1850	$3,382,148	$9,293,068
1860	15,831,581	27,849,467
1870	41,981,872	77,214,326
1880	73,321,802	128,255,480
1890	246,515,404	248,546,164
1900	330,568,779	360,818,942
1905	405,954,593	391,216,147

* The currency value usually given was $14,239,364.

[10] The currency value usually given was $359,964,310. To obtain specie values for 1870, reduce currency value one-fifth.

[11] Gold figures.

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